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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 09/03/2021****Judgment Delivered on : 13/04/2021****Writ Appeal No. 182 of 2018***{Arising out of Order dated 25.01.2018 passed in Writ Petition (C) No. 2700 of 2017 by the learned Single Judge}*

1. Chhattisgarh State Power Distribution Company Limited, Through Additional Chief Engineer, City Circle, 32 Bunbgalow, Bhilai, District Durg, Chhattisgarh.
2. The Executive Engineer, City Division, Chhattisgarh State Power Distribution Company Limited, Bhilai, District Durg, Chhattisgarh.

---- Appellants**Versus**

1. M/s. Maheshwari Steels, A Partnership firm through Partner Murlidhar Rathi S/o Late Durgadasji Rathi, aged about 61 years, 1-A, Heavy Industrial Area, Hathkhoj, Bhilai, District Durg, Chhattisgarh.
2. Punjab National Bank Through Chief Manager, Civic Centre, Bhilai, District Durg, Chhattisgarh.

---- Respondents

For Appellant : Shri K.R.Nair, Advocate
 For Respondent No. 1 : Shri Manoj Paranjpe and Shri P.R.Patankar, Advocates.
 For Respondent No. 2 : None.

Writ Appeal No. 519 of 2019*{Arising out of Order dated 11.09.2019 passed in Writ Petition (C) No. 1763 of 2019 by the learned Single Judge}*

1. Chhattisgarh State Power Distribution Company Limited, Through Superintending Engineer, City Circle, CSPDCL, Bilaspur Power House Torwa, Bilaspur, District Bilaspur, Chhattisgarh.
2. The Executive Engineer, City Division, Chhattisgarh State Power Distribution Company Limited, Bilaspur, Torwa, Bilaspur District Bilaspur, Chhattisgarh.

---- Appellants**Versus**

1. Agrawal Structure Mills (Pvt.) Ltd. Through Director, Anil Kumar Agrawal S/o Shri Madan Lal Agrawal, Age 51 years, Registered office 193/194, Urla Industrial Area, PO Birgaon, Raipur, District Raipur, Chhattisgarh Plant Address- Ferro Alloy Division, Plot No. 15, Hardi Kala, Bilha, Bilaspur, District Bilaspur, Chhattisgarh.
2. Allahabad Bank, Through Chief Manager, Civil Line Road, Near Idgah Chowk, Police Line Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Appellant : Shri Varun Sharma, Advocate.
For Respondent No. 1 : Ms. Sharmila Singhai and Shri Sanjay Agrawal, Advocates
For Respondent No. 2 : Shri Saleem Kazi and Shri Faiz Kazi, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment

Per P.R. Ramachandra Menon, Chief Justice

1. —Is it obligatory for the purchaser of the premises/property to meet the arrears/Electricity dues of the former consumer for getting a fresh electricity connection or to have the old one restored, when there is no privity of contract, the subsequent purchaser being a stranger?

—What is the nature of the Electricity dues and is it statutory or purely contractual between the Licensee and the Consumer?

—Is there any provision either under the Electricity Act, 2003 (*for short 'the 2003 Act'*) or in the Chhattisgarh State Electricity Supply Code, 2011 (*for short 'the Supply Code'*) or the Chhattisgarh State Electricity Regulatory Commission (Redressal of Grievances of Consumers) Regulations, 2011 (*for short 'the 2011 Regulations'*), to insist for payment of arrears in respect of the connection given to the premises earlier, from the new owner/occupier of the premises for getting electricity connection?

—If there is any such provision, can the relief be given to the new occupier/owner for getting absolved from the liability without challenging the vires of the said provision and getting it declared *ultra vires*?

—If there is any such stipulation in the 'Supply Code' framed by the Regulatory Commission of the State, in exercise of the power under the 2003 Act, will it not become 'part of the statute'?

—Is there any difference between the owner of the property/premises who purchased the same in an 'auction proceedings' under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') and any other person who goes for 'negotiable purchase', with reference to the satisfaction of the Electricity dues of the erstwhile owner/occupier of the property?

—Can the Electricity supply/connection provided by the Licensee under the Act 2003/Supply Code/2011 Regulations to the consumer be regarded as a 'secured asset' or 'property', to be dealt with under the SARFAESI Act?

—If the Secured Creditor has sold the property in 'as is where is' and 'as is what is' condition, but for the known encumbrances mentioned in the sale notice and alerting that statutory dues and such other payments shall be the look out of the purchaser, can the purchaser turn around and allege any lapse on anybody else in this regard?

—Can the Licensee/Distributor who has effected the Electricity supply and not connected with the sale proceedings under the SARFAESI Act, be found fault with for the lapse if any, on the part of the Secured Creditor in mentioning or non-mentioning the encumbrance/Electricity dues in the sale notice?

—What is the scheme for supply of electricity under the 2003 Act/Supply Code/2011 Regulations, when the connection is intended to be given to the "premises" and not to the individual, who can either be owner or occupier?

—How to reconcile with the various judgments rendered by the Apex Court in this regard, at different points of time?

These are the questions that are germane to the subject matter of challenge involved in these appeals.

2. The above appeals have been preferred at the instance of the Licensee/Distributor of Electricity– which is a State Government Undertaking. Grievance is against the judgment passed by the learned Single Judge holding that the purchaser of the property in an auction conducted in terms of the provisions of the SARFAESI Act, read with the relevant provisions Security Interest (Enforcement) Rules, 2002 (*for short, 'the Enforcement Rules'*) stand on a different footing and that since the Electricity dues of the erstwhile owner/occupier of the premises having not been shown in the sale notice, he is not liable to satisfy the dues of the erstwhile owner/occupier of the premises.
3. The sequence of events and the nature of contentions raised in both the cases are almost similar. The pleadings and proceedings are referred to as given in WA No. 182/2018 (arising from WPC No. 2700/2017) except where it is separately dealt with, depending on the context. For convenience of reference, the 1st Respondent in both the cases is referred to as the 'Applicant', while the Appellant is referred to as the 'Licensee'.
4. The Applicant/Writ Petitioner in WPC No. 2770/2017 – M/s. Maheshwari Steels is a Partnership Firm who took part in the e-auction published by the 3rd Respondent/Secured Creditor-Punjab National Bank, pursuant to Annexure P/2 notice dated 26.04.2016 under the SARFAESI Act. The erstwhile owner of the property – M/s. Nibi Steels Limited, who had availed a loan from the 3rd Respondent-Bank, on the strength of the aforesaid property as well as the plant and machinery had committed defaults in repayment of the loan;

pursuant to which steps were pursued by the Bank under the SARFAESI Act, leading to Annexure P/2 sale notice. It is an admitted fact that the erstwhile owner of the premises had defaulted the payment of Electricity dues payable to the Licensee in respect of the electricity connection provided to the premises as well; under which circumstance, the connection was permanently cut off. The Applicant/Writ Petitioner was identified as the successful bidder who satisfied the entire sale price of Rs. 5,05,10,000/-; upon which Annexure P/5 sale certificate was issued on 27.05.2016 clearly mentioning that the scheduled property was 'free from all encumbrances' known to the Secured Creditor.

5. On the strength of the relevant measures taken by the Government to promote the sick industries and their revival, certain concessions were being extended for purchase of the property of the defaulter undertakings and accordingly, Annexure P/6 stamp duty exemption was granted on 13.04.2017 by the competent authority of the District Industries Centre, Durg. It was accordingly, that an amended lease deed (Annexure P/7) was executed on 05.05.2017 and thereafter, application was submitted for getting electricity connection. The Applicant/Writ Petitioner was let known that a sum of Rs.1,08,80,420/- was due from the erstwhile owner/occupier of the premises to whom the electricity connection was given earlier; which was required to be satisfied. This was initially agreed vide communication dated 20.06.2016 by the Applicant/Writ Petitioner, styled as 'under protest', seeking for the benefit of installments. But later, Annexure P/8 representation was submitted on 12.07.2016 pointing out that the

Applicant/Writ Petitioner was not liable to satisfy the arrears of the erstwhile owner/consumer and hence requested to have it waived and to provide the electricity connection. This was replied by the Licensee vide Annexure P/9 dated 04.08.2016 granting the benefit of 12 installments to clear the arrears of the erstwhile owner/consumer; clearly mentioning that for getting new connection in the premises, the provisions contained in 'Clause 4.19' of the Supply Code shall be followed. This made the Applicant/Writ Petitioner to submit Annexure P/10 representation dated 10.10.2016 before the Chairman, Chhattisgarh State Electricity Regulatory Commission, for immediate restoration of the power connection and waiver of the arrears of the erstwhile owner/occupier, pointing out that the property of the sick Unit was purchased under 'as is where is' and 'as is what is' condition in an e-auction conducted under the SARFAESI Act by the Bank. The Applicant/Writ Petitioner was served with Annexure P/11 letter dated 03.05.2017 issued by the Licensee/Distributor, pointing out that the Commission has approved to release the connection to the premises on satisfaction of 25% of the outstanding dues of Rs. 1,08,80,420/- and the balance by way of 11 equal monthly installments alongwith the respective monthly energy bills. The Applicant/Writ Petitioner then submitted Annexure P/12 representation dated 04.09.2017 before the Licensee to the effect that they were not liable to satisfy the arrears of the erstwhile owner/occupier of the premises; which was replied by the Licensee as per Annexure P/13 dated 08.09.2017 turning down the request and pointing out that the arrears of the former owner/occupier of the premises to the tune of Rs.1,08,80,420/- was to be cleared in 12 installments, in conformity with 'Clause 4.19' of the

Supply Code. It was challenging the said proceedings, that the Applicant/Writ Petitioner filed the writ petition seeking to direct the Licensee to provide electricity connection to the Petitioner's Unit forthwith.

6. Almost similar is the chronology of the events with reference to the Applicant/Writ Petitioner in WA No. 519/2019 (arising out of WPC No. 1763/2019), but for the difference that the Petitioner therein is a Company incorporated under the provisions of the Companies Act, 1956 and that the property was purchased in an e-auction notified by the 3rd Respondent-Secured Creditor (Allahabad Bank). In the said case, the Electricity dues payable to the Licensee was to the tune of Rs. 77,29,708/- in respect of the electricity supplied to the former consumer/occupier of the premises *i.e.* M/s. Om Krishna Bajrang Alloys Pvt. Ltd. The property was purchased in the e-auction conducted by the Secured Creditor for a total sum of Rs.2,55,10,000/- and the sale certificate was issued on 01.12.2018 clearly mentioning that the property was free from all encumbrances known to the Secured Creditor. On 11.12.2018 (Annexure R-1/7) application was submitted before the Licensee, stating that the Applicant/Writ Petitioner was ready to satisfy the arrears of the erstwhile owner/consumer; for which benefit of installment was sought for. This was considered and allowed by the Licensee granting 'six installments' as per Annexure R-1/1 dated 17.01.2019. Pursuant to this, the Applicant/Writ Petitioner satisfied the first installment of Rs.19,32,428/- on 23.02.2019 and submitted application dated 01.03.2019 for granting fresh electricity connection, followed by the

second installment of Rs. 11,59,456/- effected on 26.03.2019 as discernible from Annexure P/5. It was thereafter, that Annexure P/8 representation was preferred on 10.04.2019 stating that the Applicant/Writ Petitioner was not liable to meet the arrears of the erstwhile owner/consumer and hence sought to withdraw from Annexure R-1/7 dated 11.12.2018; simultaneously seeking to grant the electricity connection. The said application came to be turned down as per Annexure P/1 dated 07.05.2019 insisting to satisfy the arrears in terms of 'Clause 4.19' of the Supply Code to get the electricity connection. This made the Applicant/Writ Petitioner to challenge the same by filing writ petition, simultaneously seeking for ordering refund of Rs.30,91,893/- already satisfied by them and to direct the Respondent/Licensee to provide the electricity connection forthwith.

7. The prayers were resisted from the part of the Appellant/Licensee pointing out the facts and figures, particularly the relevant provisions of law under the 2003 Act, the Supply Code and the 2011 Regulations. Various case laws were also mentioned in the return, specifically contending that 'Clause 4.19' of the Supply Code (issued under Section 50 of the 2003 Act) was 'statutory' in nature and that satisfaction of the arrears of the erstwhile owner/occupier of the premises to which the connection was provided earlier, was mandatory to get the electricity connection. Rejoinder was filed from the part of the Applicants/Writ Petitioners virtually reiterating the contentions in the writ petition.

8. Both the matters were heard elaborately by two different learned Judges of this Court, on different occasions. WPC No. 2700/2017 came to be finalised as per the judgment dated 25.01.2018 placing reliance on the verdict passed by the Apex Court in ***Isha Marbles v. Bihar State Electricity Board & Another*** (1995) 2 SCC 648, ***Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. & Others*** (2004) 3 SCC 587, ***Southern Power Distribution Company of Telangana Limited v. Gopal Agarwal & Others*** (2018) 12 SCC 644 and also the mandate of Section 35 of the SARFAESI Act which speaks about the 'overriding effect' of the provisions of the SARFAESI Act. It was noted that the auction sale made under the provisions of Enforcement Rules had become final and that the Applicant/Writ Petitioner was not liable to pay the Electricity arrears of the erstwhile owner/ consumer/occupier of the premises. Accordingly, the order dated 08.09.2017 (Annexure P/13) passed by the Licensee was set aside and the Licensee was directed to grant electricity connection forthwith; subject to compliance of the necessary formalities under the provisions of the 2003 Act, however making it clear that it was open for the Licensee to proceed with further steps for realisation of the arrears from the former owner/consumer (Nibi Steels Pvt. Ltd.) in accordance with law. The said judgment was brought to the notice of the other learned Judge while dealing with WPC No. 1763/2019, which came to be allowed almost in similar terms as per the judgment dated 11.09.2019, whereby the impugned order dated 07.05.2019 (Annexure P/1) was set aside and the Licensee was directed to give electricity connection to the Applicant/Writ Petitioner, subject to compliance of the requirements under the 2003 Act, further granting

liberty to the Licensee to recover the arrears of the electricity dues from the erstwhile owner/consumer— M/s. Om Krishna Bajrang Alloy Pvt. Ltd. Correctness of the above verdicts passed by the learned Single Judges is put to challenge in these two appeals preferred at the instance of the Licensee, as mentioned above.

9. The Respondent-Banks have filed separate written statement to the effect that the sale was conducted in 'as is where is' and 'as is what is' condition; as clearly mentioned in the auction notice and that the said proceedings were conducted strictly in conformity with the relevant provisions of law.
10. Shri K.R.Nair, the learned counsel addressed the Court on behalf of the Appellant-Licensee in WA No. 182/2018; while Shri Varun Sharma, the learned counsel addressed the Court on behalf of the Appellant-Licensee in WA No. 519/2019. Learned counsel Shri Manoj Paranjpe addressed the Court on behalf of the 1st Respondent in WA No. 182/2018, while learned counsel Ms. Sharmila Singhai appeared on behalf of the 1st Respondent in WA No. 519/2019. We also heard Shri Kazi, the learned counsel appearing for the 3rd Respondent-Allahabad Bank in WA No. 519/2019.
11. On going through the judgments under challenge, it is seen that the pleadings and the prayers were raised by the Applicants/Writ Petitioners more with reference to their status as a "successful bidder in the e-auction conducted by the Respondent-Banks under the SARFAESI Act" and the "encumbrance free nature" of the property which came to their hands as certified in the sale certificate; more so, when nothing was shown in the sale notice as to any Electricity dues

of the erstwhile owner/consumer of the premises, as an encumbrance or otherwise. This made the learned Judges to approach the issue in that direction, referring to the salient features of the SARFAESI Act and the Enforcement Rules, as discussed in paragraphs 6 to 18 in WPC No. 2700/2017 with reference to the various case laws; such as ***S. Shanmuganathan v. Authorised Officer Indian Overseas Bank, Chennai***; {AIR 2017 Madras 228}, ***Mathew Varghese v. M. Amritha Kumar & Others***; (2014) 5 SCC 610, and also as to the principle of 'Caveat Venditor' (let the seller beware) as against the principle of 'Caveat Emptor' (let the buyer beware). The former principle was held as appropriate to be applied in the cases of such nature, more so in view of Section 55(1)(a) of the Transfer of Property Act, 1882 whereby the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto; of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. Finding fault with the lapses on the part of the Respondent-Bank in not mentioning the 'electricity arrears' as an encumbrance and as to the failure to exercise due diligence before the secured asset was put to auction sale, the learned Judges held that the provisions of the SARFAESI Act/Enforcement Rules were to prevail with an overriding effect by virtue of Section 35 of the SARFAESI Act, thus declaring that the property, on auction sale, had come to the hands of the purchaser/Writ Petitioner free from all encumbrances.

12. At the very outset, we would like to note here, that the issue was sought to be projected and unfortunately approached from a different angle with reference to the provisions under the SARFAESI

Act/Enforcement Rules and the status/right of the auction purchaser to have the property claimed and enjoyed free of any encumbrances. The fundamental error on the part of the litigants is in not framing and causing consideration of the question whether the electricity connection given to the erstwhile owner/ occupier to the premises was part of the secured asset or not and whether such electricity connection would automatically get transferred to the successful bidder in the auction sale, whether it be under the SARFAESI Act or otherwise. It also escaped notice of the learned Judges whether the supply of Electricity and the Meter (unlike the electric installations like the wiring, switches etc. in the premises) which belongs to the Licensee, was a 'property' scheduled as part of the secured asset. Admittedly since it is not and it cannot be so, whether the e-auction conducted under the provisions of the SARFAESI Act/Enforcement Rules would have tilted the balance or not, was the more crucial point to be looked into. It is not necessary to burn mid night oil to hold/conclude that right to get electricity connection is not a constitutional right but a statutory right flowing from the Act, 2003, read with the provisions of the relevant State Electricity Supply Code and the relevant State Regulations framed by the concerned State Regulatory Commission, in exercise of the powers conferred under the 2003 Act. The 2003 Act also contains a *non-obstante* clause/overriding provision under Sections 173/174 and even if there is any conflict or inconsistency between the two different *non-obstante* clauses contained in two different statutes; the latter enactment (here, the 2003 Act) will prevail over the former (the SARFAESI Act/ Enforcement Rules) in view of the law declared by the Apex Court in

Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. & Others; {(2001) 3 SC 71, paragraphs 7 to 11}.

13. There is no doubt with regard to the scheme of the SARFAESI Act and the scope of the Enforcement Rules, which has been explained by the Apex Court right from the ***Mardia Chemicals Ltd. & Others v. Union of India & Others***; (2004) 4 SCC 311 and the subsequent rulings including those as referred to by the learned Judges. There is also no doubt, that once the sale is conducted in terms of the provisions of the Act/Rules as above, it will stand conveyed to the successful bidder free from all other encumbrances other than those specifically notified/mentioned in the sale notice. This being the position, the successful bidder in a SARFAESI sale can enjoy the property with absolute ownership, exclusive possession and clear and markable title without any other encumbrance. Admittedly, since no charge was created over the property at the instance of the Appellant/Licensee, they cannot touch the property which came to the hands of the Writ Petitioners/Applicants in a SARFAESI sale in their attempt (if any) to realise the arrears of electricity dues from the erstwhile owner/occupier of the premises. Admittedly, there is no such case for the Writ Petitioners/Applicants as well.

14. Nowhere in the pleadings, have the Writ Petitioners mentioned that there was any proceeding at the instance of the Licensee for realising the arrears of electricity dues of the erstwhile Owner/Consumer against the property that came to their hands pursuant to the SARFAESI sale. There is no case for the Appellant/Licensee (in their return or even in the writ appeal) that they are entitled to proceed

against the property which was the subject matter of SARFAESI sale, for realisation of the electricity dues of the erstwhile Owner/Consumer. In the absence of any such case for either of the parties and insofar as there is no challenge against the SARFAESI sale or any move to proceed against such property, which can of course be enjoyed by the writ petitioners free from encumbrances, the entire discussion in the judgments under challenge, from 'paragraphs 6 to 18' with reference to the scope of applicability of the SARFESI Act/Enforcement Rules and the relevant decisions on the point, is quite unnecessary or otiose. This is more so, since nobody is having a case that the 'supply of electricity' or right to get the electricity connection was part of the 'Secured Asset' (put to sale as per the notice issued by the Secured Creditor) that came to the hands of the successful bidders/Writ Petitioners.

15. The more pertinent question is whether the Writ Petitioners who came to be the new owners of the premises, where there was an existing connection which was cut off for non-payment of the electricity dues, are entitled automatically to get the electricity supply restored or to get a new connection, as the case may be, in terms of the 2003 Act/ Supply Code/ the 2011 Regulations?
16. To answer the above question, it will be necessary to have an idea as to the scheme of the statute i.e. the Electricity Act as it existed earlier *i.e.* under the Indian Electricity Act, 1910 (*for short 'the 1910 Act'*) and the new enactment *i.e.* the Electricity Act 2003, read with the relevant provisions of the State Supply Code and the Regulations framed by the State.

17. Section 22 of the 1910 Act made it obligatory for the Licensee to supply energy, on an application, to the person concerned; subject to satisfaction of the relevant requirements. Section 2(c) of the 1910 Act defines the term 'consumer' which is almost in similar lines as it now exists in the 2003 Act. Section 24 of the 1910 Act confers power to the Licensee to cut off supply if the energy charges or such other charges due from the consumer to the Licensee are not satisfied. Under Section 79(j) of the Electricity Supply Act, 1948, read with Section 49, it was open for the Electricity Board to make regulations to stipulate the terms and conditions of supply of electrical energy and one among such stipulations was that the consumption charges must be paid. There was no provision enabling to take steps to have it realised from the subsequent purchaser of the property/premises, as a condition to get the supply restored or to get a new connection.

18. The rights and liberties of the subsequent purchaser who purchased the property/premises in a public auction conducted by the State Finance Corporation under Section 29(1) of the State Financial Corporations Act, 1951 had come up for consideration before the Apex Court in ***Isha Marbles*** (supra). An indepth analysis of the above provision and such other provisions was made by the Apex Court and it was held that the right of the Board/Licensee was only to cut off the electricity supply, if the amounts due to the Licensee were not satisfied by the consumer; and that the subsequent purchaser of the property/premises would not come within the purview of the definition of the term 'consumer' and further that there was no privity of contract between the consumer and the Electricity Board to have the arrears of

the erstwhile owner/occupier to be cleared for getting the electricity connection restored or to have a new connection. It was also observed that the Licensee/Board was free to file a civil suit for recovery of the arrears against the erstwhile owner/occupier of the premises.

19. It was in the said circumstances, that the challenge raised by the *Isha Marbles* was accepted and the verdict passed by the High Court was set aside while declining interference in the connected matters pertaining to *Waxpol Industries* where the findings rendered by the High Court was upheld. At the same time, it is relevant to note that the Apex Court clearly noted the inadequacy of the law to enforce the liability of the previous contracting party against the auction purchaser who was a third party and was not connected with the previous owner/occupier. The relevant portion of the observations in this regard as contained in 'paragraphs 63' is to the following effect:

"63. 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, benignly protects public property and behoves everyone to respect public property. Hence, the Courts must be zealous in this regard. 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, *infinitem* 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 point to be considered is whether any change has been facilitated by virtue of the new Act *i.e.* the 2003 Act, read with the State Supply Code and the 2011 Regulations, with regard to the necessity to satisfy the past arrears of the previous consumer for getting electricity connection to the very same premises.

20. It is relevant to note in this context, that the scheme of the statute clearly reveals that electricity supply is given to the 'premises' and not to the individual, though the name of the consumer will be shown in the records and the bill to be issued in respect of the energy supplied to the premises. The word 'premises' stands defined under Section 2(51) of the 2003 Act which includes any land, building or structure. The said term has been defined with more clarity under Section 2(vv) of the Supply Code which is to the following effect:

"(vv) 'Premises' means land, building or infrastructure or part or combination thereof in respect of which a separate meter or metering arrangements have been made by the licensee for supply of electricity;"

Scrutiny on the genesis of the new enactment *i.e.* 2003 Act reveals that, in India, the Electricity Supply Industry was being governed by the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998. The Indian Electricity Act, 1910 created the basic framework for electric supply industry. The Act envisaged growth of the electricity industry through private licensees. It created the legal framework for laying down of wires and other works relating to the supply of electricity. The Electricity (Supply) Act, 1948 mandated the creation of a State Electricity Board. The State Electricity Board has the responsibility of

arranging the supply of electricity in the State. Over a period of time, the performance of State Electricity Boards had deteriorated on account of various factors. For instance, though power to fix tariffs vested with the State Electricity Board, they had generally been unable to take decisions on tariffs in a professional and independent manner and tariff determination in practice had been done by the State Governments. Cross-subsidies had reached unsustainable levels. To address this issue and to provide for distancing of Governments from determination of tariffs, the Electricity Regulatory Commissions Act was enacted in 1998. It created the Central Electricity Commission and provided an enabling provision through which State Governments could create a State Electricity Regulatory Commission. With the policy of encouraging private sector participation in Generation, Transmission and Distribution and the objectives of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1948 in a new self-contained comprehensive legislation arose. Accordingly, after extensive discussions and consultation with the States and all other stakeholders and experts, the Electricity Bill was introduced in the Parliament, which ultimately led to the Electricity Act, 2003.

21. Section 56 of the 2003 Act deals with disconnection of supply in default of payment, which is to the following effect:

"56. Disconnection of supply in default of payment:-

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

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

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

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

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

22. Chapter VI of the 2003 Act deals with 'Distribution of Electricity'. Under Section 43, duty is cast upon the Licensee to give supply of electricity to the premises within one month after receipt of the application requiring such supply made by the owner or occupier of the premises. Section 45 grants power to recover the charges in respect of the supply as provided therein; while Section 50 of the 2003 Act enables the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, disconnection of supply of electricity for non-payment, restoration of supply of electricity,

measures for preventing tampering and for such other instances. Section 181 deals with the power of the State Commissions to make Regulations consistent with the Act and Rules generally to carry out the provisions of the Act without prejudice to the generality of the power under sub-section (1). It is mentioned under sub-section (2) of Section 181 that such Regulations may provide for any of the matters dealt with under clauses (a) to (zp) which includes the subject "Electricity Supply Code under Section 50" (under sub-section (2)(x)). Section 173 deals with inconsistency in laws and Section 174 declares the 'overriding effect' of the provisions of the Act which are as given below:

"Section 173. Inconsistency in laws: Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989).

Section 174. Act to have overriding effect: Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

23. In exercise of the powers conferred by by Section 43(1) read with Section 181 (t), Section 44, Section 46 read with Section 181(1), Section 47(1) read with Section 181(v), Section 47(4) read with Section 181(w), Section 47(2), (3) and (5), Section 48(b) and Section 50 read with Section 18i(x) and Section 56 of the Electricity Act, 2003 (No. 36 of 2003) and the Electricity (Removal of Difficulties) Order, 2005 issued by the Ministry of Power, Government of India on 08.06.2005, the Chhattisgarh State Electricity Regulatory Commission

formulated the "Chhattisgarh State Electricity Supply Code, 2011" to govern distribution and supply of electricity and the procedures thereof; such as the systems of billing, modality of payment of bills, the powers, functions and obligations of the distribution licensees and the rights and obligations of consumers, etc. This Code also specifies the set of practices that shall be adopted by the Licensee to provide efficient, cost effective and consumer friendly services to the consumers.

24. '**Clause 4.19**' of the Supply Code, which is heavily relied on from the part of the Appellant/Licensee to demand arrears of electricity duties in respect of supply given to the premises of the erstwhile owner/occupier, is to the following effect:

"4.19 If the consumer, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a partner, director or managing director, has any arrears of electricity dues on the premises for which the new connection is applied and such dues are payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. In case of a person occupying a new property, it will be the obligation of that person to check the electricity bills for the previous months or, in case of disconnected supply, the amount due as per the licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding against the connection that was installed or is installed in such premises on request made by such person within 30 days from the date of receipt of such request and release the connection after clearance of outstanding dues."

Clause 4.19 of the Supply Code contains two parts. The first part is in respect of the existing consumers; whereas, the second part is in respect of a person occupying a new property. The said provision casts a duty upon the person occupying a new property to ensure that

all outstanding electricity dues as specified in the bills are duly paid up and discharged for the previous months. In the case of disconnected supply, the Licensee is also under an obligation to issue a certificate of the amount outstanding against the connection that was installed or is installed in such premises on the request made by such person within the time specified and on satisfaction of the said amount, release the connection.

25. Ms. Sharmila Singhai, the learned counsel for the Writ Petitioners in one of the two cases submits that the second limb of Clause 4.19 only envisages in respect of a case where there is an existing connection and it is not in respect of a case where a fresh connection is sought for. Shri Manoj Paranjpe, the learned counsel for the Writ Petitioners in the other case submits that the second limb of Clause 4.19 may be applicable only in respect of a case where the very same person who was having an electricity connection moves to a new property than the existing/earlier premises where the connection was provided. We find it difficult to accept the said proposition in view of the clear terminology used in the provision, which does not persuade us to draw any such inference, contrary to the intention of the law makers. When the provision is clear and unambiguous, it has to be taken as it is.
26. When the 2003 Act, particularly Section 50 read with Section 181(x), specifically confers wide power upon State Commission to formulate the Supply Code with regard to recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity;

measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters, and since the 'Supply Code 2011' has been formulated by the State Commission incorporating '**Clause 4.19**' casting an obligation upon a person occupying new property to satisfy the arrears in respect of the earlier connection given to the premises, there is a substantial change as to the field governed by the Old Act and the New Act. The terminology used as to the duty to supply electricity upon the Licensee is relevant insofar as it is to be given to the "owner or occupier of the premises". Clause 4.19 also speaks about the liability of the person who occupies a new property; which means that he need not be the owner himself.

27. The scheme of the statute clearly envisages the right of the owner or the occupier of the premises to get electricity connection, subject to satisfaction of the relevant terms/norms. Obviously, since there is a right conferred under the statute to get electricity connection even by an occupier who need not be the owner of the land (for example, a tenant of the premises), it goes without saying that Board cannot have any charge over the property when the property does not belong to the occupier. If the applicant for supply of electricity is the owner himself and if there is any arrears, apart from the right to proceed with appropriate steps under the Act/Supply Code, it is open for the Licensee to file a civil suit as well to get the amount recovered in terms of Section 56(1) of the 2003 Act. It is with reference to 'Clause

4.19' of the Supply Code, which is statutory in character, that the Appellant/Licensee informed the Writ Petitioner/Applicant (who turned to be the successful bidder and owner of the premises pursuant to the SARFAESI sale) to satisfy the arrears of electricity in respect of the connection provided earlier to the premises. On the request of the Writ Petitioner/Applicant that they were ready to satisfy the same, but for seeking the benefit of installments, it was considered and allowed as borne by the materials on record. It was accordingly, that two installments were satisfied in WP(C) No. 1763/2019; though both the Writ Petitioners chose to have a 'U-turn' later, contending that they were not actually liable to satisfy the arrears of the previous consumer. The liability to satisfy the arrears has to be examined in the said context governed by 'Clause 4.19' of the Supply Code, which in fact is no way connected with the provisions of the SARFAESI Act/Enforcement Rules as to the source under which the property came to the hands of the Writ Petitioners/Applicants. For this reason, the observation of the learned Single Judge that the provisions of the SARFAESI Act will prevail over the provisions of the Supply Code, is not germane to the issue involved.

28. Coming to the case laws, as mentioned already, the Apex Court was dealing with the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948, in ***Isha Marbles*** (supra). With reference to the said provisions, it was held that there was no provision of law which enabled the recovery of arrears of electricity dues of the erstwhile owner/occupier of the 'premises' to which the connection was given, which led to the decision in favour of the applicant therein.

The inadequacy of law has been clearly noted in 'paragraph 63' of the said judgment (extracted already). This being the position, it cannot take in a situation where a specific provision of law is available in this regard, as in the instant case ('Clause 4.19' of the Supply Code).

29. The decision rendered by the Apex Court in ***Isha Marbles*** (supra) was sought to be doubted in a subsequent ruling by a three member Bench of the Apex Court in ***Ahmedabad Electricity Co. Ltd.*** (supra). It was contended before the Apex Court that the decision in ***Isha Marbles*** (supra) did not lay down the correct law and needed correction. Specific reference was made to 'paragraphs 49 and 57' wherein the Court had held that, not only in the case of 'fresh connection' but also in a case of 'reconnection', the buyer of the property was under no obligation to pay the arrears incurred by the previous owners. Since the case involved was a case of a 'fresh connection' and since the law existing in Gujarat did not enable to collect the arrears in the case of 'fresh connection' from the new owners/occupiers of the property and since the auction purchasers had no objection to have treated their connection as fresh connection, it was held that in the case of fresh connection, though the premises are same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of the power supply to the premises in the absence of there being a specific statutory provision in that regard. It was also held that though the Court had found some merit in the submission on behalf of the appellant calling for reconsideration of the proposition of law laid in ***Isha Marbles*** (supra), it was left open for consideration in an

appropriate case.

30. Whether the supplier can recover electricity dues from the purchaser of a sub-divided plot, came up for consideration before the Apex Court in ***Paschimanchal Vidyut Vitran Nigam Limited & Others v. DVS Steels & Alloys Pvt. Ltd. & Others***; (2009) 1 SCC 210. The general proposition that a transferee of the premises or the subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of its predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises, was declared in 'paragraph 11'. In the very next paragraph, *i.e.* paragraph 12, it was held that the above legal position will not be of any practical help to the purchaser of the premises since it is open for the Distributor to stipulate the terms subject to which it would supply electricity when the purchaser of the premises approaches the Distributor seeking a fresh electricity connection to its premises. The Apex Court held that the Licensee can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises, when it was in occupation of the previous owner/occupant, should be cleared before the electricity supply is restored or a fresh connection is provided, to the premises. The following observation is relevant in this regard:

"12.....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. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not

arbitrary and unreasonable, courts will not interfere with them."

The Bench further held in 'paragraph 13' that such stipulation made by the Distributor that the dues in respect of the electricity supplied to the premises earlier should be cleared before electricity supply is restored or a new connection is given to the premises, cannot be termed as unreasonable or arbitrary. It was further held that, so as to safeguard the interest of the Distributor, the provision similar to Clauses 4.3(g) and (h) of the Electricity Supply Code were necessary to meet the situation and that there was nothing unreasonable in the provision enabling the Distributor to disconnect the electricity supply, if the dues were not paid or where the electricity supply has already been disconnected for non-payment, to insist upon clearance of arrears before a fresh electricity connection was given to the premises. The Apex Court also mentioned that, it was obviously the duty of the purchasers/occupants of the premises to satisfy themselves that there are no electricity dues before purchasing/occupying the premises. It was accordingly, that the appeal filed by the Licensee/Distributor was allowed interdicting the verdict passed by the High Court and dismissing the writ petition filed by the Respondents.

31. The question came up for consideration before the Apex Court again in ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.***; (2006) 13 SCC 101, where it was held that the Licensee was entitled to claim and receive the Electricity dues of the previous owner from the new owner/auction purchaser, in view of a specific stipulation contained in the conditions of supply providing that

reconnection or new connection shall not be given to any premises where there are arrears of any amount and unless the arrears are cleared. In view of the said provision, the decision of ***Isha Marbles*** (supra) was distinguished by the Apex Court as contained in paragraphs 15 and 16 which are extracted below:

"15.....This Court in *M/s Hyderabad Vanaspati Ltd. v. AP SEB* [(1998) 2 S.C.R. 620] has held that the Terms and Conditions for Supply of Electricity notified by the Electricity Board under Section 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the terms and conditions for supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot *ex facie* be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise.

16. The position obtaining in *Isha Marbles* was akin to the position that was available in the case on hand in view of the Haryana Government Electrical Undertakings (Dues Recovery) Act, 1970. There was no insertion of a clause like clause 21A as in the present case, in the Terms and Conditions of Supply involved in that case. The decision proceeded on the basis that the contract for supply was only with the previous consumer and the obligation or liability was enforceable only against that consumer and since there was no contractual relationship with the subsequent purchaser and he was not a consumer within the meaning of the Electricity Act, the dues of the previous consumer could not be recovered from the purchaser. This Court had no occasion to consider the effect of clause like clause 21A in the Terms and Conditions of Supply. We are therefore of the view that the decision in *Isha Marbles* cannot be applied to strike down the condition imposed and the first respondent has to make out a case independent on the ratio of *Isha Marbles* though it can rely on its ratio if it is helpful, for attacking the insertion of such a condition for supply of electrical energy. This Court was essentially dealing with the construction of Section 24 of the Electricity Act in arriving at its conclusion. The question of correctness or

otherwise of the decision in *Isha Marbles* therefore does not arise in this case especially in view of the fact that the High Court has not considered the question whether clause 21A of the terms and conditions incorporated is invalid for any reason."

The above decisions and the subsequent decision in ***Paschimanchal Vidyut Vitran Nigam Limited & Others*** (supra) were subjected to analysis by the Apex Court in ***Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri & Others***; (2010) 9 SCC 145, whereby it was reiterated that the Electricity dues would not constitute a charge on the premises, unless required by the rules and that payment of arrears of previous owner/ occupier can be a precondition for reconnection/fresh connection of electricity, if the statutory rules or terms and conditions provide for the same. However, in the given case, it was observed that the demand for arrears of the previous occupier was made after 'three years' of giving the electricity connection and hence it was barred by limitation and cannot be enforced against the auction purchaser.

32. In ***Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) and Another v. Raghunath Paper Mills Private Limited & Another***; (2012) 13 SCC 479, a similar question arose for consideration before the Apex Court. It was from the State of Orissa where the supply of electricity was subject to the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004. Referring to the relevant provision *i.e.* Regulation 13(10)(b) of the State Code, 2004, the Apex Court observed that, it was applicable only to cases of transfer of service connection from previous owner and it was not applicable to fresh connections. The relevant provision was extracted in paragraph 11 and the finding was

given in paragraph 12, which is to the following effect:

"11. Now, let us consider the relevant provisions of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply), Code, 2004 (in short 'the Electricity Supply Code'). Sub-clause 10 of Regulation 13 of the Electricity Supply Code is as follows:

"13. (10) Transfer of service connection:

a) Subject to the Regulation 8, the transfer of service connection shall be effected within 15 days from the date of receipt of complete application.

b) The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared.

Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act."

It is the case of the appellant that as per the above provision, viz., sub-clause 10(b) of Regulation 13 of the Electricity Supply Code, unless respondent No. 1 pays the arrears of electricity dues against the erstwhile company, electricity supply cannot be restored to its Unit. We are of the view that the reading of the above sub-clause makes it clear that the said provision is not applicable to respondent No. 1. We have already quoted that respondent No. 1, after purchase of the said Unit in an auction sale conducted by the Official Liquidator on "as is where is" and "whatever there is" basis has applied for a fresh service connection for supply of energy (emphasis supplied). In other words, respondent No. 1 has not applied for transfer of service connection from the name of the erstwhile company to its name. To make it clear, respondent No. 1 applied for a fresh connection for its Unit after purchasing the same from the Official Liquidator. It is also not in dispute that the arrears of electricity dues were (*sic* not) levied against the premises in question, on the other hand, they were levied against the erstwhile company.

12. From the above factual details in the case on hand and in the light of sub-clause 10(b) of Regulation 13 of the Electricity Supply Code, we hold that the said clause applies to a request for transfer of service connection but not to a fresh connection. The interpretation of this clause by learned single Judge as well as by the Division Bench was correct being reasonable, just and fair."

33. The right of an auction purchaser of the premises pursuant to the sale proceedings conducted under the SARFAESI Act/Enforcement Rules came up for consideration before the Apex Court in **Gopal Agrawal &**

Others (supra). It is to be noted that no enabling provision to demand arrears in respect of the electricity supply given to the erstwhile owner/occupier of the premises, as in the State of Andhra Pradesh, was brought to the notice of the Court. The Apex Court held that since the sale notice mentioned that the property was being auctioned on 'as is where is' basis and no evidence was shown that the purchaser had undertaken to pay the past arrears of the previous owner, the law declared in **Raghunath Paper Mills Private Limited & Another** (supra) was followed, holding that the request of the auction purchaser for 'fresh connection' could not be rejected. The said judgment does not speak about a case where a specific provision of law as dealt with by the Apex Court in **Paschimanchal Vidyut Vitran Nigam Limited & Others** (supra) exists.

34. The issue has drawn attention of the Supreme Court quite recently as well in **Telangana State Southern Power Distribution Company Limited & Another v. Srighdaa Beverages**; (2020) 6 SCC 404 where a challenge was raised by the Telangana State Southern Power Distribution Company Limited and another. It was indeed, with reference to the claim to satisfy the arrears of Electricity dues supplied to the erstwhile owner/occupant of the premises and as to the refusal on the part of the auction purchaser who purchased the property in terms of the SARFAESI Act/Enforcement Rules pursuant to the sale notice issued on 'as is where is, whatever there is and without recourse basis'. The Apex Court extracted the sale notice issued by the Bank wherein the details of the outstanding dues of the local government (property tax, water, sewerage, electricity bills etc.) were

shown. Clause 21 of the terms and conditions stipulated that the successful bidder shall bear such other expenses including the registration charges and all statutory dues payable to the Central/State Government, taxes and rates. Clause 26 provided that 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. Referring to the law declared in ***Isha Marbles*** (supra), it was observed in 'paragraph 8' of the judgment, that in ***Isha Marbles*** (supra), the significant aspect was that no clause/provision was available specifically dealing with the issue of electricity dues or such other dues as in the auction notice involved in the case in hand. The verdict passed by a 'three-member Bench' {after pronouncement of the verdict in ***Isha Marbles*** (supra)} in ***Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board & Others***; (1998) 4 SCC 470 holding that the dues under the terms and conditions of supply part take the character of statutory dues was noted in paragraph 10. It was also observed in 'paragraph 10' that the mere fact that the agreements were entered into with every consumer, only served the purpose of bringing to the notice of the consumer the terms and conditions of the supply, but it did not make the dues purely contractual in nature. Drawing strength from the ruling in ***Paramount Polymers (P) Ltd.*** (supra) and ***Paschimanchal Vidyut Vitran Nigam Limited & Others*** (supra) and also referring to the verdict passed by the Supreme Court in ***Haryana State Electricity Board*** (supra) and ***Raghunath Paper Mills Private Limited*** (supra), it was held that, though there have been some difference in the facts, there was a

clear judicial thinking in all the above judgments rendered by the Supreme Court; as emphasised in paragraph 15, which is to the following effect:

"15. We may notice that in *NESCO v. Raghunath Paper Mills (P) Ltd.*, 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 Co. of Telangana Ltd.* found that the facts were similar to *NESCO* case, and thus followed the same line."

It was on the basis of the finding as above, that the Apex Court declared that the Appellant/Licensee was entitled to raise a demand to clear the arrears due of the last owner from the subsequent purchaser of the premises for providing electricity connection in terms of the provisions of law.

35. The sum and substance of the law laid down by the Apex Court is that, in the absence of any provision, the arrears of Electricity dues of the erstwhile owner/occupier of the premises cannot be insisted to be satisfied by a subsequent purchaser/new occupier of the premises. In other words, when such right is clearly spoken to by way of Clause 4.19 of the Supply Code, which is statutory in character, the position stands on a different footing and as such, the challenge against the orders impugned in the writ petition was not liable to be sustained.
36. Coming to the instant case, a copy of the auction sale notice has been produced as Annexure P/3 (WPC No. 1763/2019) where it has been clearly mentioned that the property would be sold in "as is where is,"

as is what is and whatever there is" basis. Details of encumbrances known to the Secured Creditor were shown as: demand of Rs.9,16,967/- from the Central GST Division, Bilaspur (being demand of excise duty as arrears of Central Excise Division, Bilaspur) against property No. 1 and it was also mentioned that, for detailed terms and conditions of sale, the parties might refer to the Secured Creditor's website, as mentioned therein. A full text of the e-auction bid and terms and conditions have been made available for the perusal of the Court. Under Clause 15 of the e-auction bidding terms and conditions, the bidders were required to submit acceptance of the terms and conditions and modalities of e-auction before participating in the e-auction. Under the terms and conditions for sale of the property, it was stated that: the e-auction is being held on 'As is where is and as is what is' basis; that to the best of knowledge and information of the Authorised Officer, no other encumbrance exists on the properties. However, the intending bidders should make their own independent enquiries regarding the other encumbrances, title of property/ies put on auction and claims/rights/dues effecting the property, prior to submitting their bid. It was further let known that the auction advertisement did not constitute and would not be deemed to constitute any commitment or any representation of the Bank. The property was being sold with all the existing and future encumbrances whether known or unknown to the Bank; adding further that the Authorised Officer/Secured Creditor shall not be responsible in any way, for any third party claims/rights/dues.

37. From the above, it is clear that the encumbrances mentioned were only those 'which were known to the Secured Creditor' and that the property was being sold with all existing and future encumbrances, whether known or unknown to the Bank and that the Authorised Officer/Secured Creditor shall not be responsible in any way for any third party claims/rights/dues. It was also stipulated that it would be responsibility of the bidders to inspect and satisfy themselves about the assets and specification before submitting the bids. Under clause (xviii) it was clearly mentioned that the payment of all statutory/non-statutory dues, taxes, rates, assessments, charges, fees *etc.* owing to anybody shall be the sole responsibility of the successful bidder only. Since the Apex Court has held in ***Hyderabad Vanaspathi Ltd.*** (supra) that the electricity arrears are 'statutory' in character and not merely contractual, it was very much obligatory for the parties who participated in the auction to have inspected the premises and ascertained the extent of arrears due from the erstwhile owner/occupier of the premises, more so, in view of the obligation cast upon them by virtue of mandate under 'Clause 4.19' of the Supply Code, 2011. Since auction was conducted subject to the specific terms as aforesaid, it is not correct to say that there was any lapse on the part of the authorities of the Bank/Secured Creditor in conducting the sale or in not mentioning the Electricity dues as one of the encumbrances; which in fact is a statutory due mentioned under clause (xviii) of the terms and conditions, as aforesaid. That apart, what is mentioned therein in the notice is only the position of dues as known to the Secured Creditor and it is not necessary that the Secured Creditor shall know the particulars of 'Electricity dues' as

well; more so since their interest is only with regard to the secured assets i.e. the Plant, Machinery and the Land involved, and not the Electricity connection, which is not a secured asset at all.

38. The learned counsel for the Writ Petitioner submitted that the State Government had exempted the auction purchasers from the liability to satisfy the 'Stamp Duty' and such other dues, apart from agreeing/ conceding that the dues payable to the Government/ Departments from the erstwhile owner of the property would be the liability of the erstwhile owner (and hence to contend they are not liable to satisfy electricity arrears). Even a cursory perusal of the relevant document clearly reveals that it is only in respect of the amounts payable to the Government/Government Departments, where the concession is given. It does not refer to the amount payable to the Appellant/Licensee which is a Company incorporated under the Companies Act, 1956 (though owned by the State) and hence, a separate entity of its own. That apart, the supply of electricity is governed by the conditions of supply as per the Supply Code, 2011 and the Regulations framed by the State Commission in this regard invoking the power conferred under the relevant provisions of the Act. Insofar as Clause 4.19 of the Supply Code is concerned, no such concession can be offered or given by the Government to anybody without the involvement of the Appellant/ Licensee who has never issued any such concession; rightly since they cannot go beyond the prescription of the Code/Statute.

39. There is a case for the Writ Petitioner/1st Respondent that the issue as involved herein had come up for consideration before a Full Bench of

the Gujarat High Court in ***Sanjay Balvantrai Desai & 2 v. Dakshin Gujarat Vij Company Ltd. & 3***; AIR 2013 Guj 167. The stipulation contained in Clause 4.1.11 of the Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) (Third Amendment) Regulations, 2010 enabling to have the arrears of the electricity dues of the erstwhile owner of the property to be realised from the subsequent purchaser/owner/occupier, was the subject matter of consideration. The challenge raised against the said provision was held as inconsistent and *ultra vires* to the provisions of the 2003 Act and it was set aside. It was accordingly, that the relief was granted to the aggrieved party.

40. We are of the view that the above decision is not applicable to the case in hand, insofar as the validity of 'Clause 4.19' of the Supply Code which enables the Licensee to recover/obtain the dues of the defaulter consumer from the subsequent purchaser of the premises as a condition to provide electricity connection, is not under challenge in these cases. In the absence of any such challenge, Clause 4.19 of the Supply Code stands intact, which casts a liability upon the Writ Petitioners/subsequent purchasers; notwithstanding the fact that they had acquired the property in an auction sale under the provisions of the SARFAESI Act/Enforcement Rules (which aspect is having no relevance with regard to the liability to satisfy the arrears of electricity charges for getting the electricity connection).

41. Incidentally, it is to be noted that the dictum laid down by the Apex Court in ***Hanuman Rice Mill*** (supra) has been extracted by the learned Single Judge in paragraph 27 of the judgment in WPC No.

2700/2017, which is to the following effect:

"27. In **Haryana SEB** (supra), the Supreme Court after referring to all the earlier decisions including **Isha Marbles** (supra) and **Paschimanchal Vidyut Vitran Nigam Limited** (supra) summarised the position in the following manner: (**Haryana SEB** case, SCC pp. 150-51, para 12)

"12.(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

Even after referring to the position as to the conditions of supply, which are statutory in character, authorising the supplier of the electricity to demand (from the purchaser of the property claiming reconnection or fresh connection of electricity) the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the effect of the enabling provision *i.e.* 'Clause 4.19' of the Supply Code was unfortunately omitted to be discussed in the subsequent paragraphs of the judgment.

42. Similarly, the observation of the learned Single Judge in 'paragraph 28' that the Petitioner is not expected to make enquiry with regard to the electricity arrears with the Licensee, is not correct. The said inference appears to be on the basis of the observation made by the Apex Court in **Isha Marbles** (supra). The said observation in **Isha Marbles** (supra) was in view of the fact that there was no provision of law in this regard, whereas in the instant case, the field is taken over by Clause 4.19 of the Supply Code which puts a duty upon the person

concerned who applies for the connection to ascertain the dues and to clear the same. On making a requisition in this regard, the provision makes it obligatory for the Licensee to issue a certificate as to the extent of liability in writing. In the said circumstances, the auction purchaser who has participated in the auction and purchased the property on the basis of the sale notice and the specific terms and conditions therein (which insisted that it shall be the duty of the auction purchaser to clear the statutory and all such other dues and further that the Secured Creditor would not be liable in this regard) to have ascertained the extent of liability of the erstwhile owner/occupier of the premises in respect of the electricity supply given to the premises earlier and to have it cleared to get the electricity connection.

43. The further observations made by the learned Single Judge that, if the claim of the Licensee is allowed, the auction made under the SARFAESI Act would never become final and always remain unconcluded and it will give rise to litigation thereby frustrating the object of the SARFAESI Act which was not the intention of the law makers while enacting the SARFAESI Act which contains Section 35 giving overriding effect to the provisions of the Act or any other law and hence that the provisions of the SARFESI Act and Rules shall prevail over clause 4.19 of the Supply Code making the Supply Code inapplicable to the extent of auction sale which has become final, are also not correct. This is for the plain reason that, as mentioned already, supply of electricity is governed by the specific provisions of the Supply Code and the 2011 Regulations; whereas the sale of the

secured asset/'property' concerned (Land, Plant & Machinery) in accordance with the provisions of the SARFAESI Act/Enforcement Rules, is in no way connected with the rights and liberties of the Licensee under the 2003 Act. That apart, Electricity is not a secured asset forming part of the schedule of the property notified by the Secured Creditor and as such, it has got nothing to do with the sale conducted under the SARFAESI Act, read with the Enforcement Rules, to make the proceedings an unending process. Once the sale under the SARFAESI Act/Enforcement Rules is complete, the property – secured asset (Land, Plant & Machinery) will be coming to the hands of the auction purchaser, free of all encumbrance as mentioned in the sale notice. Merely for the reason that Electricity dues have not been mentioned in the sale notice (which may not be within the knowledge of the Secured Creditor), it will not give any passport to the auction purchaser to contend that the supply of electricity (under a different provision of law/statute) cannot be enforced in terms of the provisions of the such statute/Supply Code/Regulations. In fact, the overriding effect given to the provisions of the SARFAESI Act/Enforcement Rules under Section 35 of the said enactment is only in respect of the 'secured assets' and its conveyance, which cannot decide the conditions of supply of electricity which is taken care of by the 2003 Act/Supply Code/Regulations; more so when the Electricity Supply is not a secured asset at all.

44. In the said circumstances, whether the purchase of the property of the erstwhile owner/occupier of the premises was by way of a normal sale

or an auction sale or under the provisions of the SARFAESI Act/ Enforcement Rules, is of no consequence, insofar as the liability to satisfy the arrears of the erstwhile owner/occupier of the premises is concerned, to get connection to the very same premises. In the instant case, it is to be noted that the property is situated in an industrial area, which was purchased by the erstwhile owner. It was creating a security interest over the said property that Loan was availed from the Respondent Bank. The electricity supply was effected to the said premises by the Appellant/Licensee. Since the said property was purchased by the Writ Petitioners/Applicants in the e-auction conducted by the Secured Creditor on the basis of the contents of the terms and conditions of the sale, whereby they were required to inspect the premises with the knowledge that the payment of statutory and such other dues would be their lookout having the sale being effected on 'as is where is and what and whatever there is" basis, it was for them to have done necessary enquiry with the Licensee as to the extent of arrears of electricity dues, to have quoted the requisite extent for purchasing the property. There is no point in saying that they came to know about the said liability all of a sudden after effecting the purchase; as Clause 4.19 of the Supply Code is very much specific and further, the intention of the purchaser was to run their industry in the very same premises after availing the electricity connection.

45. In the course of hearing, the learned counsel for the Writ Petitioners/Applicants (in WPC No. 1763/2019) submitted that payment of two installments of arrears was 'under duress' as revealed

from Annexure P/7. This aspect has not been considered by the learned Single Judge. But the said submission does not have any pith or substance insofar as the 'duress/undue pressure' is not substantiated by the Writ Petitioner/Applicant with regard to the satisfaction of the installments pursuant to the application preferred by the Writ Petitioners themselves, agreeing to satisfy the arrears and to grant them the benefit of installments. That apart, the liability agreed to be cleared as above was a 'statutory liability' in terms of the provisions of the 2003 Act/Supply Code/Regulations, and as such, clearance of such statutory dues or any portion thereof cannot be cited as an instance of any duress or pressurizing circumstance, but for inferring that clearance of such arrears is necessary to obtain electricity connection in terms of the 'Supply Code' which is statutory in character. The various questions/points formulated by us in the opening paragraph stand answered as noted in the discussion made above.

46. In the above facts and circumstances, insofar as there is no challenge to Clause 4.19 of the Supply Code, 2011, the demand raised by the Appellant/Licensee to clear the arrears of Electricity dues of the erstwhile owner/occupier for effecting supply of electricity connection to the Writ Petitioners/auction purchasers, is valid and justified and the verdict rendered by the learned Single Judges interdicting the said proceedings is not correct or sustainable in law. The judgments under challenge stand set aside. The appeals are allowed and the writ petitions stand dismissed.

47. Taking note of the fact that, pursuant to passing of the verdict by the learned Single Judges, electricity connection has been provided to the premises of the Writ Petitioners/auction purchasers, we find it appropriate to permit the Writ Petitioners/1st Respondent in both the cases to satisfy the outstanding dues by way of 'six equal monthly installments' beginning from the month of May 2021, alongwith satisfaction of the regular monthly electricity charges. In case of any failure to effect the payment as above, it shall be open for the Appellant/Licensee to take appropriate action in terms of the relevant provisions of law.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE