

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai – 400 001

Telephone No. 22853561

Representation No. S-A-78-09 dt . 14/07/2009

M/s. Turakhia Feromet Pvt. Ltd,Complainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum
1. Shri. R. U. Ingule, Chairman
2. Shri. S.P. Goswami, Member
3. Smt. Varsha V. Raut, Member

On behalf of the Complainant
1. Mr. Asif Khan
2. Mr. P.J. Modi

On behalf of the Respondent
1. Shri. V.S. Khole, AECC 'A' ward
2. Shri. S.M. Jaunjal, AO 'A' ward
3. Shri. B.T. Singh, OA 'A' ward
4. Mrs. Ujjwala A. Hadkar
5. Shri. R.Y. Harkurkulkar, ACA
6. Mrs. P.S. Kirtikar, OA

Date of Hearing: 12/10/2009 & 21/10/2009

Date of Order : 18/11/2009

**Judgment by Shri. R.U. Ingule, Chairman
and Shri. S.P. Goswami, Member**

M/s. Turakhia Feromet Pvt. Ltd, P.D Mello Road, Mumbai – 400 009 has come before forum for his grievances regarding outstanding amount of previous consumer & granting of reconnection (A/c No 100-021-113*1).

Complainant's contentions in brief, are as under

1. M/s. Turakhia Feromet Pvt. Ltd. had applied for electric meter to respondent for the premises, Room no. 414 to 416, 4th floor, Vyapar Bhavan, P.D. Mello Road, Mumbai - 400 009, vide requisition no. 1090240 dtd. 12/5/2008. Respondent has demanded Rs.4,03,134.00/- as outstanding amount of previous consumer i.e. Shri. Bharat J. Vora to get electric connection to the complainant.
2. As per complainant they have purchased the above said premises from Debt Recovery Tribunal IV, Mumbai & they have no connection with Shri. Bharat J. Vora. As per complainant the premises has been handed over to him by the DRT Court order with the clean title, the amount against the property has been deposited by him to DRT who will disburse the amount to relevant parties, if respondent wants to recover the arrears they should approach DRT.
3. Enquiries were made by respondent with DRT regarding the deposited amount by the complainant so as to whether outstanding dues of the electricity of the respondent would be disbursed from the said amount. Matter was followed with DRT by respondent's Legal Dept. and came to know that Debt recovery Tribunal sold this property in auction and the amount was distributed between bankers on pro-rata basis. There is no balance in DRT from the said auction for claiming respondent's claim. Respondent states that as per their legal department opinion the properties is sold "as is where is and what is basis" by DRT. In view of this, the perspective purchaser of the property shall be liable to pay all the pending charges including electricity charges. Therefore, the electricity connection asked by M/s. Turakhia Feromet Pvt. Ltd., for the premises 414 to 416, P.D. Mello Rd., is not granted.
4. The complainant registered their grievances in Annexure 'C' format on 19/11/2008 regarding outstanding amount of previous consumer & granting of reconnection.
5. Unsatisfied by the action taken by BEST against their complaint in Annexure 'C' format, vide BEST letter ref no. CCA/AOIGR/OSCC(A)/C

FORM/12454/2009 dtd. 5/3/2009, the complainant lodged their grievances with CGR Forum in Annexure 'A' format on 14/07/2009.

6. Complainant requested Hon'ble Forum to give electric connection immediately & he should not be made liable to pay arrears of previous consumer.
7. Respondent is requesting Forum to ask the complainant to pay the total outstanding arrears Rs.4,03,134.41/- till date, so as to give him new meter connection.

Incounter the Respondent BEST Undertaking has submitted its contention inter alia, as under

8. Respondent states that electric supply at Room No. 414 to 416, 4th flr, Vyapar Bhavan, P.D. Mello Road, Mumbai - 400 009 having A/c no. 100-021-113 is in the name of Shri. Bhrat J. Vora getting supply through the Meter No. P000143 and P 021473. The said meter was removed on 23/2/2006 for non payment of electricity bills. At the time of removal of meter, the outstanding amount was Rs.3,95,912.28/-. The security deposit of complainant with respondent i.e. amount Rs.81,363/- was adjusted in the outstanding bill in the month of October 2007. At present total outstanding amount is Rs.4,03,134/- till date.
9. As per respondent, M/s. Turakhia Feromet Pvt. Ltd had purchased the said premises in auction from Debt Recovery Tribunal (IV) (DRT), Mumbai. M/s. Turakhia Feromet Pvt. Ltd., had applied for electric supply meter connection for the above said premises vide Requisition No. 1090240 dtd. 12/5/2008. In view of the above, respondent asked M/s. Turakhia Feromet Pvt. Ltd to pay an arrears of Rs.3,70,837/- of the above said premises, so that respondent can proceed further for giving reconnection to the premises.
10. Respondent state that M/s. Turakhia Feromet Pvt. Ltd had disputed the matter and stated that the premises is purchased from Debt Recovery Tribunal and not from earlier owner i.e. Bharat J. Vora. Hence, complainant is not responsible for any liabilities of Mr. Bharat J. Vora. Also stating that the total amount against this property has been deposited by complainant to DRT to disburse the amount to the relevant concerned. In view of this complainant requested to give connection to their premises.

11. Respondent state that enquiries were made with DRT regarding the deposited amount by the complainant so as to whether outstanding dues of the electricity of the respondent would be disbursed from the said amount. Matter was followed with DRT by respondent's Legal Dept. and came to know that Debt recovery Tribunal sold this property in auction and the amount was distributed between bankers on pro-rata basis. There is no balance in DRT from the said auction for making good respondent's claim. As per legal opinion the properties is sold "as is where is and what is basis" by DRT. In view of this, the perspective purchaser of the property shall be liable to pay all the pending charges including electricity charges. Therefore, the electricity connection asked by M/s. Turakhia Feromet Pvt. Ltd., for the premises 414 to 416, P.D. Mello Rd., is not granted.

Reasons

12. We have heard the Representative for complainant and Representative for Respondent. Perused papers.
13. The respondent licensee's letter dtd. 5th Sept, 2008 directing the complainant to pay the outstanding amount of Rs.3,70,837/- in respect of the erstwhile occupier Shri. Bharat J. Vora for availing the electricity supply connection, has triggered off the controversy to be resolved by this forum in the instant complaint. We observe that the complainant Private Limited Company has purchased a premises from Debt Recovery Tribunal, Ballard Estate, Mumbai in the Public auction held on 17/3/2008 for Rs.2,50,25,000/-. At the relevant time the electricity supply provided to the said premises located at Nav Vyapar Bhavan premises Co-op. Society Ltd, P.D. Mello Road, Mumbai - 400 009, was cut off by the respondent licensee on account of non payment of the electricity consumption charges of Rs.3,70,837 by the erstwhile occupier Shri. Bharat J. Vora.
14. The complainant company after purchasing the said premises in public auction therefore applied for meter connection vide, requisition dtd. 12/5/2008 which has been denied by the respondent licensee due to the said unpaid outstanding amount of Rs.3,70,837.
15. The representative appearing for the complainant's Company vehemently submitted before this forum that the said premises has been purchased by it in a public auction conducted by the Debt Recovery Tribunal. Therefore in no way the complainant has been concerned with the erstwhile occupier Shri. Bharat J. Vora and the outstanding electricity consumption amount of Rs. 3,70,837/-. It has been further submitted on behalf of the company that it is for the respondent licensee to recover the said outstanding consumption

charges from the erstwhile occupier Shri. Bharat J. Vora and not from the complainant's company. The complainant therefore prayed this forum for directing the respondent to provide electricity supply as per the application dtd. 12/5/2008 submitted by it.

16. The representative appearing for the respondent licensee in counter has submitted that the electricity supply has been provided to the premises presently occupied by the complainant's company. Besides it in the public auction the complainant's company has purchased the said premises from DRT on "as is, where is" basis. It is therefore the complainant's company has purchased the said premises alongwith the liability of paying the consumption charges of Rs.3,70,837/- running alongwith the said premises. On behalf of the respondent, it has been further strenuously urged that before putting a bid in a public auction, the complainant's company has inspected the said premises and must have learnt about the electricity supply being snapped for non remittance of the consumption charges. The complainant therefore has purchased the said premises in a public auction fully knowing the liability of payment of electricity consumption charges kept in arrears by the erstwhile occupier. Therefore the complainant now cannot turn around and deny the payment of the said amount of arrears on the ground he being a new purchaser and having no concern with the erstwhile occupier Shri. Bharat J. Vora.
17. The respondent licensee in support of its contention has pressed into service 3 Judgements handed down by the Hon'ble Supreme Court in the cases as listed herein under.

- I) **AIR 2009 SC 647**
Paschimanchal Vidyut Vitran Nigam Ltd & Ors.
V/s.
M/s. DVS Steels & Alloys Pvt. Ltd. & Ors.
- II) **AIR 2007 Supreme Court 2**
Dakshin Haryana Bijli Vitran Nigam Ltd.
V/s.
M/s. Paramount Polymers Pvt. Ltd.
- III) **AIR 2006 Kerla 194 Full Bench**
Suraj K.R.
V/s.
Secretary, Kerla State Electricity Board & Anr.

We observe that for resolving the dispute emanating from the present complaint it would be appropriate and beneficial to advert to the law laid down by their Lordship of the Supreme Court in these Judgements.

18. Firstly, we may advert to the Judgement handed down by Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Ltd & Ors (Supra)**. On going through this Judgment we find that in regard to a controversy whether the electricity supplier can recover the electricity dues from the purchaser of a property, it has been observed by their Lordship in para no. 9 and we find it most appropriate to reproduce these observations, which reads as under:-

Para 9. "The supply of electricity by a distributor to a consumer is 'sale of goods'. The distributor as the supplier, and the owner / occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary".

19. We thus find that in paragraph no. 9 while laying down the legal position it has been *inter alia* observed by their Lordship that a *transferee* of the premises or a subsequent occupant of a premises with whom the electricity supplier has no privity of contract, cannot be obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. However, thereafter in paragraph no. 10 their Lordship proceeded to foist the liability of paying the electricity charges in arrears, on the purchaser of the property, holding that the said legal position could not be of any practical help to a purchaser of premises, as the electricity distributor can stipulate the terms subject to which it would supply electricity. In our view it would be appropriate to reproduce the observations made by their Lordship of the Supreme Court in para no. 10 and it runs as under:-

Para 10. "But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears made to

the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon 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”.

20. Placing a heavy reliance on the Judgement of **Paschimanchal Vidyut Vitran Nigam Ltd & Ors (Supra)** the present respondent licensee has vehemently submitted about its right to stipulate a term & condition directing the present complainant to pay the arrears of electricity consumption charges as a `condition precedent`, for obtaining electricity supply to the premises purchased by it in a public auction.
21. At this juncture we find it appropriate to advert to a Judgement handed down by the Lordship of the Supreme Court in a case of **Isha Marbles V/s. Bihar State Electricity Board and Anr. (1985(2) SC 648)**. On going through this Judgement we observe that it has been laid down by their Lordship that, in the absence of their being a charge over the property and the premises comes to be owned for occupier by the auction purchase seeking supply of electricity energy by way of a fresh connection, he cannot be call upon to clear the past arrears as a condition precedent for the fresh connection or supply. The electricity supplier cannot seek the enforcement of the contractual liability of the prior consumer against the third party purchase. Thus, it is impossible to impose on a purchaser a liability which was not incurred by him.
22. We thus find that in the **Isha Marbles case (Supra)** despite the property was purchased in an open auction sale the electricity supplier was prohibited from claiming any arrears of electricity charge in respect of the erstwhile occupier as there was no any privity of contract existing between new purchaser of the premises and the electricity supplier. Such contract to pay the electricity charges was existing between the erstwhile occupier/owner and the electricity supplier. Therefore a liability flowing from such contract to pay the arrear cannot be foisted on the subsequent purchaser. In short the liability to pay the electricity charges in arrears cannot be considered as a `charge` on the premises.
23. We thus find that the Judgement of the Hon'ble Supreme Court in the case of **Paschimanchal Vidyut Vitran Nigam Ltd & Ors** certainly advances and support the case of the respondent. However, at the same time we find a counter legal proposition being laid down by the Hon'ble Supreme Court in a case of **Isha Marbles (Supra)**. As we

find the Judgement in **Isha Marble (Supra)** being handed down by a bench of 3 Judges and that in a case of **Paschimanchal Vidyut Vitran Nigam Ltd & Ors (Supra)** by 2 Judges bench, we are therefore under obligation to rely on a ratio laid down by Hon'ble full bench of the Supreme Court in a case of **Isha Marbles (Supra)**.

24. To conclude on this legal aspect, an auction purchaser, cannot be called upon to clear the past arrears as a condition precedent for supplying an electrical energy to him on his application. The auction purchaser being a third party the respondent cannot seek enforcement of any contractual liability against him for payment of electricity charges in arrears.
25. The respondent licensee has also placed a reliance on a Judgement of the Supreme Court in a case of **Dakshin Haryana Bijli Vitran Nigam Ltd V/s. M/s. Paramount Polymers Pvt. Ltd** (AIR 2007 Supreme Court 2) Significant to observe that in this case also property was purchased in an open auction on the basis of "as is where is basis", as observed by their Lordship in para no 2 in this Judgement. Their Lordships have also adverted to the ratio laid down in a case of "**Isha Marble's (Supra)**" in para no. 4. We further observed that in this case of **Dakshin Haryana Bijli Vitran Nigam Ltd** it was made obligatory on the part of the purchaser to clear the outstanding charges first in order to apply and avail the electricity connection by executing the fresh agreement by virtue of statutory obligation cast on the purchasee, under clause no. 21A of the "Terms and Conditions of Supply of Electrical Energy. In this contest we find it appropriate to observe that in para no. 13 of this judgement, their lordships have referred to its judgement in the case of **M/s. Hyderabad Vanaspati Ltd. V/s. Andhra Pradesh State Electricity Board** (C 199872 SCER 620) wherein it has been 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.
26. We further observe that their Lordship has not considered the question of correctness or other wise of the decision in **Isha Marble's case (Supra)** as there was no occasion for the same, especially in view of the fact the Hon'ble High Court had not considered the question whether clause no. 21A of the terms & conditions incorporated, is invalid for any reason, as observed in paragraph no. 14 of the Judgement. We thus find that this Judgement in case of **Dakshin Haryana Bijli Vitran Nigam Ltd (Supra)** does not further the case of the respondent licensee as urged before us.
27. The respondent licensee has also pressed into service a Judgement of full bench of Kerla High Court in case of **Suraj K.R. V/s. Secretary, Kerla State Electricity Board & Anr (AIR 2006 Kerla 194 Full Bench)**. On going through this Judgement we observed that the petitioner had purchased a land in public auction. At the time of purchase of the said premises, electricity connection was not available as the same was disconnected on account of non payment of

electricity charges by the previous owner. In this case we find that section 79 provided under (Electricity Supply Act, 1948) was enabling the electricity Board to make regulations. Accordingly, the said board in exercises of its powers confirmed by section 79 and other enabling provisions of the statute has issued the regulations relating to conditions of supply of electrical energy. There under regulation 15 clause (d) was providing that all dues to the electricity board from a consumer, shall be the first charge on the asset on the consumer and all dues including penalty should be realized as a public revenue due on land. Significant to observe at the juncture that the Hon'ble Kerla High Court has also adverted to the Judgement of the Supreme Court in case of **Isha Marbles (Supra)**. Thereafter while concluding its Judgement the Hon'ble Kerla High Court has also observed in para no. 12 that the Apex Court has held the auction purchaser cannot held liable in absence of any statutory provision. However, in the case at its hand as there was a statutory provision like regulation 15 (e) therefore proceeded to hold that the electricity board is entitled to insist payment of arrears of electricity charges as pre condition for supply of electricity to the same premises to a prospective consumer.

28. To sum up, as we have observed above, the ratio laid down by the Hon'ble full bench of Supreme Court in case of **Isha Marbles (Supra)** makes it blatantly manifest that the auction purchaser cannot call upon to clear past arrears in respect of the erstwhile owner/occupier, as condition precedent to supply electricity. The Auction purchaser being third party the licensee cannot seek enforcement of contractual liability. In the Judgement of **Dakshin Haryana Bijli Vitran Nigam Ltd (Supra) & Suraj K.R. (Supra)** we find that statutory provisions were available to the electricity distributor licensee to claim & recover the electricity charges in arrears from the new purchaser. However, admittedly in the case on our hand there has not been any such statutory provision available to the present respondent to put as a condition precedent to the present complainant company for clearing the entire electricity charges in arrears of Rs.3,70,837 for availing an electricity supply as applied by it on 12/5/2008.
29. Before we part with this order we may however observe that a proviso provided under regulation 10.5 incorporated under Maharashtra Electricity Regulatory Commission (Electricity Supply Code) regulation 2005 puts a statutory obligation foisting liability to pay the electricity charges in arrears to a maximum period of 6 months of the unpaid charges of electricity supply to the premises. We further observe that the representative appearing for the complainant company has also admitted and candidly undertaken out of its free volition before us, to pay such electricity charges in arrears for the said period of 6 months as provided under regulation 10.5. As such we do not find any controversy raised by complainant to this extent, needs to be resolved by us.
30. Last but not the least, an attempt has been made on behalf of the Respondent licensee to urge that on approaching the DRT authority vide its letter dtd. 12th October 2009, the Recovery officer by passing

an endorsement at the foot of very letter, has informed in writing that as the said property has been sold by DRT in a public auction on `as is where is` basis, therefore electricity dues will be borne by the auction purchaser. In this regard, we observe that, neither the Recovery officer has been vested with any authority to lay down the ambit and scope of phrase viz `as is, where is` basis, nor any judgement of any superior court has been placed before us by the Respondent laying down such proposition of law as submitted before us by the Respondent. We therefore find ourselves unable to accept this argument submitted before us by the Respondent.

Dissenting judgement by Mrs. Varsha Raut, the Member

31. I am in total agreement with the observations of learned Chairman and learned member made in this judgment up to and including para 27. I am, however, unable to concur with the views expressed by the learned Chairman and learned member for the reason that in **Isha Marbles case (Supra)** it has been held by their Lordships that an auction purchaser cannot call upon to clear past arrears in respect of the erstwhile owner/occupier, as a condition precedent to supply electricity and there is no any statutory provision available for the same. The auction purchaser being third party, the licensee cannot seek enforcement of contractual liability. In my considered opinion therefore there is no need for the complainant to clear the outstanding arrears of the previous consumer.
32. I further observe that this Forum being a statutory body set up with a view to adjudicate the grievances of the electricity consumers and to protect the interest of consumers and inform them about their rights, I am of the opinion that just because complainant has volunteered or agreed to pay certain amount as provided under regulation 10.5 either out of ignorance of his rights or in good faith, this Forum will not be justified in asking such complainant to pay such amount by ignoring his rights.
33. With due respect, therefore, I am unable to concur with the view of the majority and therefore in my considered opinion the respondent in this case is liable to provide electric connection to the complainant company without demanding any amount from the Complainant on account of the past arrears of previous consumer.
34. For the forgoing reasons we proceed to pass the following order by virtue of majority's view.

ORDER

1. The complainant stand allowed.
2. The respondent licensee has been directed to provide an electricity connection to the complainant's company in view of its application dtd. 12/5/2008, within a period of one week commencing from the date on which it pays 6 months unpaid charges for electricity supplied to such premises as per the provision provided under MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.
3. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member