



2025:CGHC:59768

**AFR****HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 2752 of 2016**

**1** - Polybond Rock Fibre Pvt. Ltd. A Company Duly Registered Under Revelant Provisions Of The Companies Act 1956, Having Its Registered Office At Chitlangia Compund Basantpur Rajnandgaon Chhattisgarh Through Its Authorized Signatory/ Coordinator Shri Hira Swami Naidu, S/o Late Narayan Swami Naidu Aged Aboiut 56 Years R/o Dipak Nagar Near Nirankari Satsangh Bhawan, Durg Chhattisgarh, Chhattisgarh

**2** - Hira Swami Naidu, S/o Late Narayan Swami Naidu, Aged About 56 Years Authorized Signatory/ Coordinator R/o Dipak Nagar, Ploybond Rock Fibre, Pvt. Ltd. Rajnandgaon And Resident Of Near Narankari Satsangh Bhawan Durg Chhattisgarh Civil And Revenue Distirct Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

**... Petitioner(s)****versus**

**1** - Chhattisgarh State Power Distribution Company Limited (CSPDCL) A Company Incorporated Under The Relevant Provisions Of The Companies Act 1956 And A Power Sector Undertaking Of The State Government Of Chhattisgarh And A Successor Of Chhattisgarh State Electricity Board C.S.E.B. Having Its Registered Office At 4th Floor, Vidyut Sewa Bhawan, Daganiya Raipur Chhattisgarh, Chhattisgarh

**2** - Chhattisgarh State Electricity Regulatory Commission C.S.E.R.C. A Body Corporate Constituted Under Section 82 Of The Electricuty Act.

2003 Having Its Head Office At G.E. Road, Civil Lines, Raipur  
Chhattisgarh, District : Raipur, Chhattisgarh

**3** - State Of Chhattisgarh Through The Secretary, Ministry Of Emergy,  
Mahanadi Bhawan, Mantralaya, Naya Raipur, Distirct Raipur  
Chhattisgarh, District : Raipur, Chhattisgarh

**4** - Bank Of India, Through Its Branch Manager, Rajnandgaon Branch  
Fawwara Chowk, Digvijay College Road, Rajnandgoan Chhattisgarh,  
District : Rajnandgaon, Chhattisgarh

**... Respondents**

**(Cause title is taken from Case Information System)**

For Petitioner	: Mr. Raza Ali, Advocate alongwith Mr. Karunendra Narayan Singh, Advocate
For Respondent No.1	: None
For Respondents No. 2	: Ms. Meena Shasti, Advocate
For Respondent No.3/ State	: Mr. U.K.S. Chandel, Dy. Advocate General
For Respondent No.4	: Mr. Anand Shukla, Advocate

**(HON'BLE SHRI JUSTICE BIBHU DATTA GURU)**

**Order on Board**

**05/12/2025**

1. By the present petition, the petitioners are seeking for the following relief:-

*“10.1 A writ and/or an order in the nature of appropriate writ do issue calling the records from the respondent authorities concerned pertaining to case of the petitioners for perusal of this Hon'ble Court, if thinks fit in the facts & circumstances of case.*

*10.2 A writ and/or an order in the nature of mandamus writ do issue directing the respondent State authorities*

*including the bank authorities, jointly and severally, to return the amount illegally recovered for providing electricity connection with accrued interest at the prevailing bank rate including the respondent No.4-bank who has not disclosed existing charge in its advertisement although in possession of the property for years together before auction and in the facts and circumstances of the case.*

*10.3 A writ and/or an order in the nature of mandamus writ do issue directing the respondent State authorities concerned for adopting proactive by approach amending their law/rules/ regulations/code in such manner which has the effect in boosting the economy of the nation rather downgrading it in open world market as India has already been downgraded by the World Bank to almost rank at 134 for making investment in the country.*

*10.4 Cost of the proceedings.*

*10.5 Any other writs and directions that may be deemed fit and just in the facts & circumstances of case.”*

2. (a) The indisputable facts of the case in hand are that earlier Arihant Rock Wool Fibre Pvt. Ltd. Rajnandgaon (for brevity, ‘Arihant’) operates a plant over the land bearing Khasra No.887/1 & 888 total area 2.04 acres situated at village Bakal, Tehsil Dongargaon, District Rajnandgaon. For operating the said plant, Arihant availed loan facility from the respondent No.4/ Bank. However, on account of default committed by Arihant in repaying the loan amount, the respondent No.4 after following the due process of law as enumerated under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the Act, 2002"), took possession of the property of Arihant. Thereafter the auction notice dated 19/04/2012 has been published for sale of the said property. In the said process, the petitioner participated wherein after being declared successful, the petitioner paid the sale consideration of Rs.2,62,18,000/-. Thereafter the bank handed over the sale certificates of the movable and immovable properties of Arihant to the petitioner. According to the petitioner, in the sale certificate, it is clearly mentioned that '*the sale of the schedule property was free from all encumbrances known to the secured creditor*'.

(b) Subsequently when the petitioner intended to start production or run the plant, applied for electricity connection with the respondent No.1 and at that time, he came to know that there were outstanding dues on the part of Arihant since 2008 and for which the electricity connection has been permanently disconnected. The petitioner tried his level best to convince the authorities that they are not liable to pay any electricity dues of Arihant. Despite the said fact, the respondent No.1 asked the petitioner to pay an amount of Rs.17,67,873/- failing which recovery proceedings will be initiated. To get immediate electricity connection, the petitioner paid the said amount and thereafter running from pillar to post for getting refund of the same. According to the petitioner, the respondent No.4/Bank has also denied its liability and even the respondent No.1 is not acceding the request of the petitioner in this regard, hence this petition.

3. Learned counsel appearing for the petitioner would submit that the impugned action on the part of the respondent authorities is illegal arbitrary and not at all sustainable in the eyes of law. He would submit that the dues recovered from the petitioner have become barred by time on the date of recovery and since the time barred debt has been recovered not payable by the petitioner, the respondent No.1 are bound to return the amount with interest. The action of the respondents is violative of the petitioner's fundamental right guaranteed under Article 14, 19, 21 and 300A of the Constitution of India. In support of his contention, he would place reliance upon the decisions rendered by the Supreme Court in the matter of ***Ahmedabad Electricity Co. Ltd. vs. Gujarat Inns Pvt. Ltd. & Ors. (2004) 3 SCC 587*** and would submit that recovery of dues of previous owner from the auction purchaser is bad in law.
  
4. *Per contra*, learned counsel appearing for the respondent/ Electricity Department would submit that the present petition is relating to a money claim for which suit could be instituted within a period of three years whereas the instant petition has been filed beyond the period of limitation. Learned counsel would submit that in fact, the petitioner had voluntarily approached the electricity company with an undertaking to pay 25% of the dues at first and the remaining in 10 installments. And as such he cannot be permitted to turn back and demand refund of the amount. Learned counsel would further submit that even the petitioner approached the Electricity Consumer Redressal Forum for refund

of the amount which has been rejected, however, without availing the alternative remedy, he straightway approached this Court. Learned counsel would also submit that the company has acted in accordance with the Rules which cannot be termed as arbitrary or illegal by any stretch of imagination. According to the learned counsel, the electricity company was never kept informed of the auction sale or purchase of the premises by the petitioners or any of the parties to the auction sale. Learned counsel appearing for the State would support the aforesaid argument.

5. Learned counsel appearing for the Bank would submit that in the auction notice, it is specifically mentioned that the auction is on 'as is where is basis'. As per the said auction notice, the dues like excise duty, property tax, income tax and all other taxes and dues, which affected the mortgaged property at the time of auction, if any, the successful bidder is required to enquire details regarding unknown dues before participating in the auction process. Thus, it is the duty of the petitioner to acquire and collect all the information regarding dues and liabilities of Arihant. He would submit that the Bank is not aware about the electricity dues. Thus, the bank is not at all liable to refund the electricity amount, if any, deposited by the petitioners.
6. I have heard learned counsel for the parties and perused the documents.
7. It is an admitted fact that on account of defaults committed by

Arihant in making installments of the loan amount, the respondent No.4/ Bank initiated the proceedings under the Act, 2002 and after following the due process of law, took possession of the subject property of Arihant vide possession notice dated 17/03/2010 (Annexure P/1). Thereafter the bank initiated the auction proceedings. In the said auction proceedings, there is a specific mention that the auction proceedings is on 'as is where is basis' (जहाँ है, जैसी है, जो है). In the said notice, it is also mentioned that the auction purchaser is required to get the information regarding the dues like excise duty, income tax, property tax etc. of Arihant before participating in the auction proceedings. In the said tender process, the petitioner on being successful, paid the sale consideration of Rs.2,62,18,000/- and on receipt of the same, the sale certificate issued in favour of the petitioner.

8. When the petitioner wish to operate the plant, he approached the respondent No.1 for providing the electricity connection. At that time the Electricity Department informed the petitioner that there is an outstanding dues of Rs.17,67,873/- to which the petitioner himself by letter dated 30/12/2012 (Annexure R/2-1) submitted an undertaking that first he will pay 25% of the dues and thereafter the remaining amount will be deposited in 10 equal installments and his request was accepted; he submitted the cheques which were duly encashed by the electricity company. Even for getting the electricity connection in its name; the petitioner deposited the security amount of Rs.11,08,000/-, which is evident from money receipt dated 18/02/2013 (Annexure R/2-3).

9. It is an admitted fact that the subject premises was sold in auction sale on an 'as is where is basis'. A sale on as is where is basis postulates that the purchaser would be acquiring the assets with all its existing rights, obligations and liabilities. When a property is sold on an as is where is basis, encumbrances on the property stand transferred to the purchaser upon the sale.
10. The Supreme Court in the matter of ***K.C. Ninan vs. Kerala State Electricity Board & Ors. (2023) 14 SCC 431*** has considered the issue in detail wherein the decision relied by the petitioner in the matter of ***Ahmedabad Electricity Co. Ltd.*** (supra) has been considered and held thus at paras 137 & 138 :

*“137. The Electric Utilities have urged that: (1) the auction-purchasers were put to notice of the requirement of the clearance of dues; (ii) the public auction-sales of premises were held on an "as-is-where-is" basis; (iii) this would include a condition of acknowledging all liabilities in respect of the premises, with or without a specific reference of payment of electricity dues; and (iv) in a sale arising out of commercial transactions, the auction-purchaser is required to undertake due diligence of outstanding dues which are premises specific. On the other hand, the auction-purchasers submitted that: (i) a condition such as "as-is-where-is" is a feature of physical property and does not extend to claims which are not charges or other encumbrances running with land; (ii) the argument finds support in the decisions in Punjab Urban Planning & Development Authority v. Raghu Nath Gupta and DDA v. Kenneth Builders & Developers (P) Ltd.; (iii) electricity dues cannot be ascertained merely by looking at a property; and (iv) there was no obligation on the*



*applicants to ascertain the electricity dues payable, more so in view of the judgment in Isha Marbles.*

*138. In the present batch of cases, the premises were sold in auction-sales generally held on an "as-is-where-is" basis. A sale on "as-is-where-is basis" postulates that the purchaser would be acquiring the asset with all its existing rights, obligations and liabilities. When a property is sold on an "as-is-where-t is" basis, encumbrances on the property stand transferred to the purchaser upon the sale.*

11. It is also to note that a condition of supply under Section 49 of the Electricity (Supply) Act, 1948 requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply, will have a statutory character. The implication of expression, 'as is where is basis' is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of local authorities, etc.

12. While concluding the issue, the Supreme Court in **K.C. Ninan** (supra) summarized the conclusions at Para 342 which reads thus:-

*"342.1. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;*

*342.2. The duty to supply electricity under Section 43 is*

*with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities:*

*342.3. For an application to be considered as a "reconnection", the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;*

*342.4. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;*

*342.5. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;*

*342.6. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act:*

*342.7. The rule-making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the Regulatory Commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;*

*342.8. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;*

*342.9. The implication of the expression "as-is-where-is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and*

*342.10. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction-purchasers."*

*(emphasis added)*

13. From the above, it is crystal clear that in cases of the e-auction, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on as is where is basis, whatever there is and without recourse basis, there can be no doubt that the liability to pay electricity dues exist on the auction purchaser.

14. It is noteworthy to mention here that when an appropriate 'as is where is basis' clause is incorporated in the auction sale agreement, it is for the intending purchaser to satisfy themselves in all respects about pending dues, in respect of the properties. In

auction sale, the auction purchaser has the right to inspect the premises and ascertain the facilities available including whether electricity is supplied to the premises. In fact, information about the disconnection of power is easily discoverable with due diligence which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be implausible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

15. Applying the well settled principles of law and for the reasons mentioned hereinabove, in my considered view, the petitioner is not entitled for any relief.

16. As a sequel, the writ petition, *sans substratum*, is liable to be and is hereby dismissed, leaving the parties to bear their own cost(s).

Sd/-  
**(BIBHU DATTA GURU)**  
**JUDGE**

**Head Note**

Sale of property on "as is where is" basis encumbrances, including statutory dues, pass to purchaser. Condition u/S 49 of the Electricity (Supply) Act, 1948 requiring a new owner to clear arrears of the previous owner before grant of electricity supply, as the same has statutory character and is binding on the purchaser.

सम्पत्ति का "जहाँ है जैसे है" के आधार पर विक्रय में विल्लंगम होता है, इसमें समस्त वैधानिक बकाया क्रेता को हस्तांतरित हो जाता है। विद्युत (प्रदाय) अधिनियम, 1948 की धारा 49 के शर्त अनुसार, नये मालिक को विद्युत प्रवाह प्रदाय करने से पूर्व पुराने मालिक के बकाया के पूर्ण भुगतान की आवश्यकता है, क्योंकि यह वैधानिक प्रकृति का है तथा क्रेता पर बंधनकारी है।