

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 2162 of 2019

M/s Shree Shyam Steel having its place of business at Agrasen Path,
Ramgarh Cantt, District- Ramgarh through its partner Shyam Kumar Agrawal
..... ... Petitioner

Versus

1. Damodar Valley Corporation having its registered office at Kolkata,
through its Chairman-cum-Managing Director
2. The Chief Engineer-I (Commercial), Damodar Valley Corporation, Kolkata
3. The Member (Finance), Damodar Valley Corporation Commercial
Department, Kolkata
4. The Senior Divisional Engineer, Damodar Valley Corporation, Kolkata
.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner :- Mr. V.P. Singh, Sr. Advocate
 Mr. Rajiv Singh, Advocate
 Mr. Ravi Kumar Singh, Advocate
For the Respondents :- Mr. Srijit Choudhary, Advocate

Order No. 12

Dated: 13.04.2021

The present case is taken up today through Video conferencing.

2. The present writ petition has been filed for issuance of direction upon the respondents to grant fresh electrical connection to the petitioner at its premises which the petitioner has acquired on auction through Bank of Baroda vide sale certificate dated 12.06.2018. Further prayer has been made for quashing letter dated 31.08.2018 (Annexure-5 to the writ petition) issued by the Chief Engineer-I (Commercial), Damodar Valley Corporation (DVC), Commercial Department, Kolkata whereby the respondent has made a demand of Rs.4,88,54,766/- towards the outstanding bill dues in respect of the acquired premises. The petitioner has also prayed for issuance of direction upon the respondents to grant compensation to the petitioner for delay of each day in granting fresh electrical connection to the petitioner as per the statutory provision of Section 43 of the Electricity Act, 2003.

3. An interlocutory application being I.A. No. 3538 of 2020 has been filed on behalf of the petitioner seeking direction upon the respondent-DVC to grant fresh electrical connection to the petitioner on the condition that it will deposit the alleged outstanding dues of the erstwhile consumer namely M/s. Uday Vijay Steel Pvt. Ltd. under protest in monthly installments of Rs.10,00,000/- which should be refunded/adjusted by the respondent-DVC against the energy consumption bills of the petitioner upon the final decision of the dispute with regard to the petitioner's liability to pay the said dues.

4. The said interlocutory application was taken up by this Court on 12.01.2021 and on the said date, Mr. Rajiv Singh, learned counsel for the petitioner, prayed for an adjournment to file supplementary affidavit

bringing on record certain developments taking place in the matter. Subsequently, a supplementary affidavit in I.A. No. 3538 of 2021 has been filed on behalf of the petitioner on 22.02.2021.

5. Mr. V.P. Singh, learned Senior Counsel for the petitioner, while referring to the said supplementary affidavit, submits that the petitioner is a registered partnership firm of Mr. Shyam Kumar Agarwal and Mr. Deepak Raj Mangalam, businessmen having no nexus or relationship whatsoever with M/s. Uday Vijay Steel Pvt. Ltd- the erstwhile owner of an industrial unit situated in the Industrial Area, Bokaro ("industrial premises") or its Promoters/Directors- Mr. Uday Shankar Prasad, Mr Amarnath Singh and Mr. Suresh Kumar Sharma. The petitioner has become legal occupant of the concerned premises through publicly advertised E-Auction Sale conducted by an Authorised Officer of the Bank of Baroda ('Mortgagee') for Rs.3.10 Crores in accordance with law under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 [in short to be referred as "the Act, 2002"] proceedings to recover its huge unpaid debts from M/s Uday Vijay Steel Pvt. Ltd. ('Mortgagor'). The auction-sale of the concerned premises was made free from all encumbrances known to the Bank vide Sale Certificate dated 12.06.2018 issued as per Appendix-V read with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. The auction sale of the concerned premises by the Authorised Officer of Bank of Baroda under the Act, 2002 was duly confirmed by the learned Debts Recovery Tribunal, Ranchi which was pleased to dismiss the appeal preferred by the erstwhile owner, vide its order dated 28.09.2018 in S.A. No. 19 of 2018. The petitioner, vide its letter dated 06.08.2018, applied to the respondent-DVC for fresh electrical connection under Para 6.10(a) of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2015 (hereinafter to be called "the Regulations, 2015"). The respondent-DVC, vide its letter dated 31.08.2018, replied that the power supply to the concerned premises would be provided only after payment of the outstanding dues of Rs.4,88,54,766/- of erstwhile owner claiming that NOC had not been obtained from the respondents as per clause 5.3.3 of the Regulations, 2015. It is further submitted that the petitioner continued to follow up with respondent-DVC and also furnished letter dated 18.02.2019 issued by the Bank of Baroda authenticating the sale certificate issued to the petitioner. However, the respondent-DVC, vide its letter dated 28.02.2019 again informed that new connection in the

industrial premises might be considered once the issue of recovery of outstanding dues was settled. The petitioner again submitted representations to the respondent vide its letter dated 11.03.2019 and 27.03.2019 bringing to notice that its case falls squarely within the four corners of clause 6.10(a) of the Regulations, 2015 and the respondent DVC is under mandatory duty to provide fresh electrical connection to the petitioner. However, when the petitioner's representations remained unresponded, the petitioner preferred the present writ petition seeking direction to the respondents for providing fresh electrical connection under clause 6.10(a) of the Regulations, 2015 without realizing past dues of the erstwhile owner of the concerned premises.

6. Learned Senior Counsel for the petitioner also submits that on 03.09.2019, during course of hearing of I.A. No. 7173 of 2019 filed by the petitioner in the present writ petition and on 23.09.2019, during course of hearing of I.A. No. 7172 of 2019 filed in another writ petition being W.P.(C) No. 2089 of 2019 (Mangalam Ispat Vs. DVC & Ors.) having similar dispute, learned Senior Counsel appearing for the petitioners of both the writ petitions submitted that in order to commence production in the Units, the petitioners were ready to pay monthly installments of Rs.25,00,000/- against the previous dues of erstwhile owner along with the current bill(s) subject to the outcome of the writ petitions. Pursuant to the reply filed by the respondent-DVC giving its concurrence for providing fresh connection on payment of Rs.25,00,000/- per month, a co-ordinate Bench of this Court vide order dated 23.09.2019 passed in I.A. No. 7172 of 2019 of W.P.(C) No. 2089 of 2019, directed the petitioner of the said case to make payment of monthly installment of Rs.25,00,000/- to the respondent-DVC subject to the final outcome of the writ petition. Since the present petitioner did not have such financial means to pay said amount in installments to respondent-DVC in the wake of certain family medical emergencies, it did not press I.A. No. 7173 of 2019 filed in the present writ petition and accordingly, vide order dated 23.09.2019, the said interlocutory application was dismissed as not pressed. However, after having arranged financial support and in order to start production in the concerned premises, the petitioner of the present writ petition filed I.A. No. 3538 of 2020 showing its readiness and willingness to pay monthly installments of Rs.10,00,000/- to the respondent-DVC against the previous dues of erstwhile owner subject to the final adjudication of the dispute in question. The said interlocutory application was taken up by this Court on 06.07.2020 and the respondent-DVC sought two weeks' time to file

its reply. Subsequently, the petitioner being in grave need of electricity supply to start production so as to generate revenue, submitted letter dated 16.12.2020 to the respondent-DVC showing his willingness to make payment of monthly installments of Rs.25,00,000/- against the past dues of the erstwhile owner subject to the outcome of the present writ petition. Learned Senior Counsel for the petitioner lastly submits that the present writ petition may be disposed of in terms with the order dated 23.09.2019 passed in I.A. No. 7172 of 2019 in W.P.(C) No. 2089 of 2019.

7. Mr. Srijit Choudhary, learned counsel appearing on behalf of the respondent-DVC, raises an objection with regard to maintainability of the present writ petition. It is submitted that the word 'complainant' has been defined under regulation 2(d) of (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations, 2020 which has been framed by the Jharkhand State Electricity Regulatory Commission in exercise of the power conferred under Sections 42 and 181 of the Electricity Act, 2003. It is further submitted that in view of Section 2(d) (i) of the Electricity Act, 2003, the word 'complainant' includes "applicants for new connection" and as such the petitioner has efficacious/alternative recourse of approaching the Dispute Redressal Forum created by the DVC under Section 42(5) of the Electricity Act, 2003. However referring to paragraph-12 of the reply affidavit to I.A. No. 3538 of 2020, he submits that if the petitioner is ready and willing to make payment as per the undertaking which was recorded in the order dated 03.09.2019 passed in the present writ petition, the respondent-DVC has no objection in granting fresh electrical connection to the petitioner subject to outcome of the dispute as may be decided by the Forum.

8. So far as the issue of maintainability of the present writ petition is concerned, Mr. V.P. Singh, learned Senior Counsel for the petitioner, fairly submits that the petitioner is though ready to approach the forum created by the respondent-DVC under Section 42(5) of the Electricity Act, 2003, yet since the adjudication of dispute in question may consume some time, this Court may also make interim arrangement in terms with the order dated 23.09.2019 passed by a co-ordinate Bench of this Court in W.P.(C) No. 2089 of 2019 as the present case is also similarly situated.

9. Having heard the learned counsel for the parties and considering the submissions of the learned counsel for the parties, the present writ petition is disposed of with following direction:

(i) The petitioner shall file a complaint before the forum constituted by the respondent-DVC under Section 42(5) of the Electricity Act, 2003 on the issue as raised in the present writ petition within one month from the date of the order. On filing of the said complaint, the said forum of the DVC shall admit the complaint and dispose of the same on merit in accordance with law expeditiously.

(ii) The petitioner shall pay the first installment of Rs.25,00,000/- against the dues of the erstwhile consumer/occupant of the premises in question i.e. Rs.4,88,54,766/- (as has been stated by the respondent-DVC in paragraph 17 of reply affidavit to I.A. No. 3538 of 2020) by 23rd April, 2021. On depositing the said installment of Rs.25,00,000/-, the respondent-DVC shall provide fresh electric connection to the petitioner which shall be commenced from 7th May, 2021, subject to the compliance of other requirements/formalities by the petitioner.

(iii) The petitioner shall continue to deposit the rest monthly installments as well as the energy consumption bills raised against it by the respondent-DVC.

(iv) After commencement of fresh electrical connection, the respondent-DVC shall raise the energy consumption bills separately from the dues of the erstwhile consumer/occupant of the premises in question which would be paid by the petitioner in terms with the order of this Court.

(v) The payment of the dues of the erstwhile consumer/occupant of the premises in question by the petitioner in terms with the present order shall be subject to the final outcome of the complaint as would be filed by the petitioner before the Dispute Redressal Forum of the respondent- DVC.

(iv) If the petitioner makes default in making the payment of monthly installments in terms with the direction of this Court, the respondent-DVC will be at liberty to take appropriate measures against the petitioner in accordance with law.

10. I.A. No. 3538 of 2020 also stands disposed of accordingly.

(Rajesh Shankar, J.)