KANPUR ELECTRICITY SUPPLY CO. LTD. & ANR. A

v.

M/S. L.M.L. LIMITED & ORS.

(SLP (Civil) No. 33984 of 2009)

MAY 7, 2010 B

[ALTAMAS KABIR, CYRIAC JOSEPH AND C.K. PRASAD, JJ.]

U. P. Electricity Supply Code, 2005 – Clause 4.41 read with clause 4.49 – Reduction in contracted load – Deteriorating market conditions – Application for reduction of contracted load from 8 MVA to 1.25 MVA with effect from 01.04.2006, by a public limited company – Meeting between two companies to reduce the same subject to certain condition – Load reduction approved by Electricity Regulatory Commission – Company declared 'Relief undertaking' as also 'Sick unit' – Electricity Supply Company-KESCO raising monthly bills based on 8 MVA load thereafter – KESCO asking the company to submit Bank Guarantee for arrears of amount as per the amended clause 4.49 – Load not reduced since Bond and affidavits submitted by company did not secure the outstanding dues – Direction by BIFR to KESCO to continue to accept Rs.5 lakhs p.m. against arrear dues together with current dues on basis of actual consumption – Strict adherence by company to the said order – However, issuance of disconnection notice – Writ petition by company seeking direction upon KESCO that load stood reduced from 01.04.2006 – Allowed by High Court – Interference with – Held: Not called for – KESCO, instead of helping the company to come out of its financial crisis, prevented it from doing so by refusing to lower the load from 8 MVA to 1.25 MVA, as agreed upon – In fact, company had been declared a 'Relief Undertaking' and a 'Sick Company' – When decision was taken to reduce the contract load, unamended Clause 4.49 was in existence which provided for submission of either C D E F G H

A *a Bank Guarantee or a Bond or any other instrument to the satisfaction of the licensee of the equal amount of pending dues – After amendment, Bond was excluded from the provision – Continued insistence of KESCO that Bank Guarantee should be provided by the company in respect of*
B *its outstanding dues, had the effect of negating the decisions to revive the Company – Electricity Act, 2003 – s. 5.*

Respondent no.1 is a public limited company engaged in the manufacture and sale of two-wheelers. Due to market fluctuations it had to stop its manufacturing
C **activities. The respondent company was declared a "Relief Undertaking" u/s. 3(1) of the U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966. The respondent no.1-company applied to the petitioner-State Electricity Supply**
D **Company for reduction of the contracted load from 8 MVA to 1.25 MVA from 1st April, 2006. The decision was taken by two companies to reduce the load with certain conditions. The Electricity Regulatory Commission approved the reduction of the load. However, electricity**
E **bill was raised for the month of May, 2006 on basis of 8 MVA load. The respondent paid the bill on basis of 1.25 MVA load. The respondent company was also declared a "Sick Company" under Sick Industrial Companies (Special Provisions) Act, 1985. The load was not reduced**
F **since the outstanding dues of the respondent company were 8.42 crores as on 31st March, 2006. The petitioner wrote to the respondent to submit a Bank Guarantee for arrears of the amount as per the amended clause 4.49 of the U.P. Electricity Supply Code, 2005 so that action could**
G **be taken to reduce the load from 8 MVA to 1.25 MVA. Thereafter, the respondent company restarted its manufacturing activities and sought increase of the load from 1.25 MVA to 2.25 MVA. The petitioner rejected the same since the respondent did not submit the Bank**
H **Guarantee for the balance amount. The respondent**

company submitted a Bond stating that the Company was agreeable to make payment of the arrears, if any, to petitioner upon the directions of the court and the amount as was decided by the courts. However, since the two affidavits and the Bond did not secure the outstanding dues of the petitioners and were also not to its satisfaction, the load was not reduced. The BIFR then directed the petitioners to continue to accept Rs.5 lakhs p.m. against the arrear dues together with the current dues on the basis of the actual consumption and not to adopt coercive measures to disconnect the supply of electricity. However, the petitioner issued a disconnection notice. The respondent company filed a writ petition seeking direction that the load of the respondent company stood reduced from 8 MVA to 1.25 MVA pursuant to the then prevalent provisions of Clause 4.41(b) of the 2005 Code, with effect from 1st April, 2006, 2.25 MVA with effect from April, 2007 and 2.50 MVA with effect from August, 2007. The High Court held that the decision with regard to the reduction of the load of the respondent company stood approved on 19th April, 2006, and, accordingly, the effective date of such reduction would have to be reckoned from 1.5.2006. Hence, the Special Leave Petition.

Dismissing the Special Leave Petition, the Court

HELD: 1.1. What is difficult to comprehend is the inscrutable manner in which decisions arrived at in common are sought to be negated on account of bureaucratic lethargy. An order was passed by BIFR u/ s. 22(3) of SICA on 22nd October, 2007, *inter alia*, directing that KESCO would continue to accept Rs.5 lakhs per month against the arrear dues together with the current dues on the basis of the actual consumption. What is of significance is that despite compliance by the respondent no.1-company with the said order the

A petitioners continued to raise bills on the respondent-company on the basis of 8 MVA load, although, it had agreed to reduce the same from 8 MVA to 1.25 MVA with effect from 1st April, 2006.[Para 24] [439-B-H; 440-A-B]

B 1.2. This case is an example of how a positive decision taken to help a struggling industry to find its feet can be scuttled by legalese, although, an agreement had been reached between the parties regarding payment of the arrears in installments along with the dues, and despite the same being duly followed by one of the C parties to the agreement. The threat to yet again disrupt its manufacturing operations looms large on the horizon on account of the inability of the respondent No.1-company to comply with the provisions of Clause 4.41 read with Clause 4.49 of the U.P. Electricity Code, 2005. D On 31st March, 2006, the outstanding dues of the respondent-company was Rs.8.42 crores and when Clause 4.49 was amended, the respondent-company was asked to submit a Bank Guarantee/Bond to secure the amount of Rs.10.24 crores outstanding as arrears on that E date. In compliance thereof, the respondent-company duly furnished a Bond on 17th June, 2007, which was not accepted by the petitioners on the ground that it did not secure the outstanding dues of the petitioner No.1 and were not to its satisfaction. Although, the petitioners were F fully aware of the precarious financial condition of the respondent-company and having agreed to reduce the contract load from 8 MVA to 1.25 MVA, it refused to do so on the ground that the Bond provided did not secure the outstanding dues, resulting in a vicious circle of G events. On the one hand, the high MVA load continued to contribute to the raising of high electricity bills, which the respondent-company was not able to pay, and, on the other hand, the respondent-company continued to suffer further financial losses on account thereof. [Para 25] H [440-B-G]

1.3. In the amended provisions of Clause 4.49 the furnishing of a Bond by way of security was excluded. However, the discretion not to accept such Bond always lay with the petitioners, giving them the discretion not to accept the Bond furnished by the respondent-company. That is exactly what happened in the instant case. While agreeing to give the respondent-company the benefit of a reduced MVA, the petitioners had prevented the respondent-company from accessing such privilege by continuing to raise bills on the basis of the high MVA which the respondent-company apparently was unable to bear on account of its financial conditions. As a result, instead of helping the respondent-company to come out of its financial crisis, the petitioners prevented the Company from doing so by refusing to lower the load from 8 MVA to 1.25 MVA, as agreed upon. It is not the case of the petitioners that the agreement which had been arrived at between the Managing Director of the petitioners and the Executive Director of the respondent-company, had been breached by the respondent-company. On the other hand, it has been categorically contended by the company that it had scrupulously given effect to the said agreement as also the order of the BIFR dated 22nd October, 2007 upon the respondent No.1-company being declared a Sick Industrial Company under section 3(1)(o) of SICA on 8th May, 2007. [Para 26] [441-A-F]

1.4. While passing the impugned order, the High Court lost sight of the order of the BIFR and confined itself to the provisions of Clauses 4.41 and 4.49 of the U.P. Electricity Supply Code, 2005 framed under Section 50 of the Electricity Code, 2003. If the respondent No.1-company is to revive, and, thereafter, survive, a certain amount of consideration has to be shown, which was fully realized by the petitioners themselves, but they allowed themselves to be tied up in knots over

A compliance with the provisions of Clauses 4.41 and 4.49 which are Rules framed for application in special cases in order to help industries which had fallen on difficult days, to recoup its losses and to bring its finances on an even keel. [Para 27] [441-G-H; 442-A-B]

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1.5. There is no dispute that pursuant to an application made on 31st March, 2006 by the respondent no.1-company, praying for the reduction of the contract load from 8 MVA to 1.25 MVA with effect from 1st April, 2006, a Meeting had been held between the Managing C Director of KESCO and the representatives of the respondent-company in which a decision was taken for reduction of the load with certain conditions. On the said date itself KESCO conveyed its agreement for reduction of load to the U.P. Electricity Regulatory Commission and D sought its formal approval and that no objection was raised by the Commission with regard to the said decision except to indicate that the said decision would have to be implemented strictly in accordance with the Electricity Supply Code, 2005. When the decision was taken on 19th E April, 2006 to reduce the contract load, the unamended version of Clause 4.49 of the Code was in existence and that the same provided for submission of either a Bank Guarantee or a Bond or any other instrument to the satisfaction of the licensee of the equal amount of F pending dues. The only problem which has arisen is KESCO's decision not to accept the Bond given by the respondent-company on the ground that it did not provide sufficient security for the outstanding dues. In the totality of the existing circumstances, of which G KESCO was fully aware, the decision not to accept the Bond was not in accordance with the decision arrived at on 19th April, 2006 to reduce the contract load from 8 MVA to 1.25 MVA. In fact, the respondent-company had been declared to be a Relief Undertaking by the State Government on an application dated 24th June, 2004.

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Furthermore, soon after the decision was arrived at to lower the contract load, the respondent-company was also declared as a Sick Company on 8th May, 2007 and the BIFR, while considering the revival of the respondent-company by its order dated 22nd April, 2007, directed KESCO to continue to accept Rs.5 lakhs per month against the arrears apart from payment of the current electricity bills on actual consumption basis and also not to adopt coercive measures to disconnect the supply of electricity of the respondent-company. The result of the continued insistence of KESCO that a Bank Guarantee should be provided by the respondent no.1-company in respect of its outstanding dues, had the effect of negating the decisions to revive the Company. [Para 28] [442-B-H; 443-A-C]

1.6. No interference is called for with the impugned order of the High Court. The petitioner-Company will not be prevented from taking appropriate steps against the respondent-Company in the event the latter Company commits default in paying the instalments as directed by the BIFR towards the arrears or in respect of the current electricity bills. [Para 29] [443-D]

Modern Syntax (I) Ltd. vs. Debts Recovery Tribunal, Jaipur **AIR (2001) Raj 170;** *Doburg Lager Breweries Pvt. Ltd. vs. Dhariwal Bottle Trading Co.* **(1986) 2 SCC 382, referred to.**

Case Law Reference:

AIR (2001) Raj. 170	**Referred to.**	**Para 18**
(1986) 2 SCC 382	**Referred to.**	**Para 18**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 33984 of 2009.

From the Judgment & Order dated 18.09.2009 of the High Court of Judicature at Allahabad in CWMP No. 24900 of 2009.

A Parag Tripathy, ASG, Pradeep Misra, Daleep Kumar, D.P. Pandey and Manoj K. Sharma for the Petitioners.

M.L. Lahoty, Pabank Sharma, Mahesh Aggarwal, Pabam K. Sharma and E.C. Agrawala for the Respondents.

B The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. The Respondent No.1 is a Public Limited Company engaged in the manufacture and sale of two-wheelers, scooters and motorcycles, having its registered office C at Panaki Industrial Area in Kanpur, U.P. The Company obtained power load from the Kanpur Electricity Supply Administration, hereinafter referred to as "KESA", which was extended from time to time. In the year 2006, the sanctioned load of the Company was 8 MVA from 132 KV line.

D 2. On account of a decreasing market the Company apprehended that its work force would be directly affected and, accordingly, made a representation to the State Government for declaring the Respondent-Company as a "Relief Undertaking" under Section 3(1) of the U.P. Industrial E Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966. A Notification was issued by the State Government on 24th June, 2004, suspending all contracts, agreements and other instruments in force under any law, for a period of one year which resulted in a strike disrupting F the operations of the company. Consequently, all manufacturing activities of the Respondent-Company came to a halt, ultimately leading to the declaration of a lockout on 7th March, 2006. As a result, on 31st March, 2006, the Respondent-Company applied to the Kanpur Electricity Supply Company, hereinafter G referred to as "KESCO", for reduction of the contract load from 8 MVA to 1.25 MVA with effect from 1st April, 2006. On 19th April, 2006, a meeting took place between the officers of KESCO and the Respondent-Company in which a decision was taken for reduction of the load with certain conditions. On H the said date itself KESCO conveyed its agreement for

reduction of load to the U.P. Electricity Regulatory Commission and sought its formal approval. A

3. The Commission did not raise any objection regarding the decision to reduce the load but it observed that the agreement which had been reached between the parties was internal to the parties and the same had to be implemented strictly in accordance with the Electricity Supply Code, 2005. Thereafter, the Respondent wrote to KESCO on 17th May, 2006, to reduce the load with effect from 1st April, 2006. However, the electricity bill for the month of May, 2006 based on 8 MVA load was presented to the Respondent on 7th June, 2006. The Respondent immediately sent a letter of protest indicating that the bill amount ought to have been raised on the basis of the agreed load of 1.25 MVA. The respondent paid the bill on the basis of 1.25 MVA load and also invoked the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, hereinafter referred to as the "SICA". The said reference was registered as Case No.80 of 2006 on 15th September, 2006 and, thereafter, on 8th May, 2007, the Respondent-Company was declared as a sick industrial company under section 6(3)(o) of the 1985 Act and the IDBI Bank was appointed as the Operating Agency. On 4th October, 2006, KESCO wrote to the Respondent-Company for submitting a Bank Guarantee for the arrears of the amount as per Clause 4.49 of the U.P. Supply Code, 2005 so that action could be taken to reduce the load from 8 MVA to 1.25 MVA. In response, the Respondent No.1-Company wrote to KESCO indicating that once the normal work of the factory was restored, the payment of arrears of electricity dues would be finalized. B C D E F

4. On 11th March, 2007, the Respondent-Company restarted its manufacturing activities and requested KESCO to increase the load from 1.25 MVA to 2.25 MVA. KESCO, however, responded on 20th March, 2007, informing the Petitioners that the load reduction could not be considered owing to non-submission of the Bank Guarantee by the G H

A Respondent-Company for the balance amount of the bill raised for the month of May, 2006. On 3rd August, 2007, a settlement was arrived at with regard to the payment of arrears. As the respondent was registered as a Sick Unit with the Board for Industrial and Financial Reconstruction, hereinafter referred as B the "BIFR", the said Board by its order dated 22nd October, 2007 directed KESCO to continue to accept Rs.5 lakhs per month against their arrears, besides payment of current electricity bills on actual consumption basis, and not to adopt coercive measures to disconnect the supply of electricity. C However, on 6th April, 2009, a disconnection notice was issued by KESCO against which the Respondent-Company filed Writ Petition No.20499 of 2009 in which an interim order was passed by the Allahabad High Court on 22nd April, 2009, directing that in case the Respondent-Company continued to D pay the amount as directed by the BIFR, its electricity supply would not be disconnected. The said writ petition is still pending disposal. However, since, in the meantime, the claim of the Respondent-Company for reduction of the load from 8 MVA to 1.25 MVA with effect from 1st April, 2006, was not decided or implemented, the Respondent-Company filed Writ Petition E No.20499 of 2009, *inter alia*, for an appropriate writ or direction to the effect that the load of the Respondent-Company stood reduced from 8 MVA to 1.25 MVA pursuant to the then prevalent provisions of Clause 4.41(b) of the 2005 Code, with effect from 1st April, 2006, 2.25 MVA with effect from April, F 2007 and 2.50 MVA with effect from August, 2007.

5. Interpreting the provisions of Clauses 4.41 and 4.49 of the U.P. Electricity Code, 2005, the High Court came to the conclusion that the decision with regard to the reduction of the G load of the Respondent-Company stood approved on 19th April, 2006, and, accordingly, the effective date of such reduction would have to be reckoned from the first day of the following month, namely, from 1.5.2006, in terms of Clause 4.41(e) of the Code. The writ petition was, accordingly, allowed

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and it is against such order of the writ court, that the present Special Leave Petition has been filed. A

6. From what has been indicated hereinabove, it will be clear that the question required to be answered in the present Petition involves the interpretation of Clause 4.41 read with Clause 4.49 of the U.P. Electricity Supply Code, 2005, framed under Section 50 of the Electricity Act, 2003. In order to appreciate the issue raised, the provisions of Clause 4.41 are reproduced hereinbelow : B

"4.41 Reduction in Contracted load. C

(a) Every application for reduction of contracted load shall be made in duplicate to the concerned officer on prescribed form (Annex-4.10) along with the prescribed processing fee and charges for reduction of load alongwith the following documents: D

(i) Work completion certificate and test report from the licensed electrical contractor where alteration of the installation is involved.

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(ii) Maximum demand recorded in the last two billing cycles if the meter has the facility to record maximum demand and the electricity bill of the previous two billing cycles.

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(iii) Letter of approval from the Electric-Inspector, wherever applicable (or as per rules when framed under Section 53).

(iv) Copy of the latest paid electricity bill. If matter related to dues is pending in court, the procedure as per Clause 4.49 may be followed. G

(b) The designated authority of the Licensee shall communicate to the consumer the decision on his

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A application within thirty days of receipt of the duly completed application.

(c) A fresh agreement for reduced load shall be executed for 2 years but the period of compulsory agreement 2 years for the purpose of payment of MCG shall be counted from the date of original agreement for the purpose of P.D.

(d) No refund shall be allowed for the deposited cost of the line and substation. However, if the security deposited earlier is in excess of the requirement for the reduced load, the excess of the requirement for the reduced load, the excess shall be adjusted in future bills.

(e) The effective date of such reduction shall be reckoned from the first day of the following month in which the application has been sanctioned by the licensee.

(f) ....."

7. Clause 4.49 was amended with effect from 14th September, 2006. Accordingly, both the unamended provisions of Clause 4.49 and the amended provisions are set out hereinbelow :

Unamended version :

"4.49. Release of Connection/Load where arrears disputed are stayed by Court/other forums :

Where there is stay order by any Court, Forum, Tribunal, or by Commission, staying the recovery of any dues by licensee, and during the operating period of any such order:

(i) If a consumer sells a premises and an application for release of new connection is made by the purchaser.

Or

(ii) If any application for enhancement or reduction of load is made by a consumer. A

the licensee shall release the new connection to such consumer and also permit reduction or enhancement of loads, B

Subject to

- Submission either of Bank Guarantee, or Bonds, or any instruments to the satisfaction of licensee of equivalent amount of pending dues, by the applicant, and, C
- Agreement with licensee on terms of extension/ invoking of guarantee, and,
- Levy of surcharge amount on pending dues, D

And the application of such consumers shall not be kept pending by the licensee."

Amended version : E

"4.49. Permanent disconnection/ release of Connection/ Enhancement and Reduction of Load where arrears disputed are stayed by Court/other forums :-

Where there is a stay order by any Court, Forum, Tribunal, or by Commission, staying the recovery of any dues by licensee, and during the operating period of any such order – F

(i) If a consumer sells a premises and an application for release of new connection is made by the purchaser; or G

(ii) If any application for new connection, reconnection, en-hancement or reduction of load is made by a consumer; or H

A (iii) If any application for permanent disconnection is made by a consumer the licensee shall release the new connection to such consumer and also permit reconnection reduction or enhancement of Loads, as well as allow permanent disconnection.

B Subject to

. Submission of Bank Guarantee to the satisfaction of licensee, of equivalent amount of pending dues, by the applicant or owner, and,

C

. Agreement with licensee on terms of extension/ invoking of guarantee, and

. Levy of surcharge amount on pending dues,

D and the application of such consumers shall not be kept pending by the licensee."

8. As will be seen from the above, if any application for reduction of load is made by a consumer, such reduction could E be permitted subject to :

"Submission either of Bank Guarantee, or Bonds, or any instruments to the satisfaction of the licensee of equivalent amount of pending dues by the applicant."

F 9. The said condition was replaced in the amended provisions by the following condition :

"Subject to submission of Bank Guarantee to the satisfaction of the licensee, of equivalent amount of pending dues, by the applicant or owner."

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10. It is the difference between the said two provisions, whereby the submission of a Bond had been excluded from the amended provisions, which has given rise to the disputes in the present case.

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11. It appears that the outstanding dues of the Respondent-Company were 8.42 crores as on 31st March, 2006 and hence the load was not reduced. In the meantime, after the amendment of Clause 4.49 of the Code, a letter was sent to the Respondent-Company on 4th October, 2006, asking it to submit a Bank Guarantee/Bond securing the amount of Rs.10.24 crores outstanding as arrears on that date. The Respondent-Company, accordingly, by its letter dated 17th June, 2007, submitted a Bond stating therein that the Company was agreeable to make payment of the arrears, if any, to KESCO upon the directions of the Court and the amount as was decided by the Courts. However, since the two affidavits and the Bond did not secure the outstanding dues of the Petitioners and were also not to its satisfaction, the load was not reduced. As indicated hereinabove, the Respondent-Company, thereafter, filed Civil Misc. Writ Petition No.24900 of 2009 before the Allahabad High Court.

12. Learned ASG, Mr. Parag Tripathy, appearing for the Petitioners, submitted that since neither the two affidavits nor the Bond filed by the Respondent-Company were acceptable to the Petitioners, the load was not reduced from 8 MVA to 1.25 MVA, as requested, since securing the outstanding balance was one of the pre-conditions for such reduction. The learned ASG urged that since securing the amount payable was involved, neither the affidavits nor the Bond could guarantee recovery of the arrear dues in case of breach. It was further urged that even the unamended version of clause 4.49, on which the Respondent-Company relies, makes it very clear that either release of a new connection or the reduction or enhancement of loads would be subject to submission of either a Bank guarantee or Bond or any instrument *to the satisfaction of the licensee* (emphasis added). The learned Additional Solicitor General submitted that the High Court appears to have lost sight of the said condition and that the Petitioner-Company could not be compelled to accept the affidavits or Bond as security/guarantee for the arrears due.

A 13. The learned ASG then submitted that while the Respondent-Company had relied upon Annexure 6.5 to the U.P. Electricity Supply Code, 2005, the same only provides relief to Sick Industrial Companies and Relief Undertakings falling under Clause 6.16 of the said Code, which provides as follows :-

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> *"6.16. Disconnected Industrial Units seeking revival :* For industries lying disconnected over six months and seeking to revive, the Commission order dated 12th July, 2005 given in Annexure 6.5, shall apply to the extent specified in the order, and if not contrary to any G.O., or any court order."

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Mr. Tripathy urged that the said clause would not apply to the case of the Respondent-Company since it was not the case of a disconnected industrial unit seeking revival and hence no D reliance could be placed on Annexure 6.5 to the above Code. It was also pointed out that although the load had not been reduced, as requested by the Respondent-Company, on 13th July, 2007, another request was made for increase of the load from 1.25 MVA to 2.25 MVA, which action was not permissible.

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14. The learned ASG submitted that till such time the provisions of Clause 4.49 were not complied with by the Respondent-Company, the question of reduction of the contracted load from 8 MVA to 1.25 MVA did not arise and the further request to increase the same to 2.25 MVA was also F not maintainable. The learned ASG submitted that the approach of the High Court to the problem was completely wrong and cannot, therefore, be sustained.

15. On the other hand, appearing for the Respondent-G Company, Mr. M.L. Lahoty, Advocate, reiterated the submissions made before the High Court that on account of the deteriorating financial health of the Company and apprehending a further adverse effect on its work force, the State Government on 24th June, 2004, upon exercise of its power under Section H 3 of the U.P. Industrial Undertakings (Special Provisions for

Prevention of Unemployment) Act, 1966, issued a notification granting the Respondent-Company the status of a "Relief Undertaking". The notification, which was initially issued for a period of one year, was subsequently extended for two consecutive periods of one year each on 14th June, 2005 and 23rd June, 2006, respectively. The consequence of the same was that all contracts, agreements, etc. stood suspended for a period of one year and all proceedings pending before any Court, Tribunal, Authority, etc. stood stayed.

16. On account of the deteriorating market conditions and suspension of most of its manufacturing activities, the Respondent-Company applied for reduction of load from 8 MVA to 1.25 MVA and made a formal application to KESCO to reduce its load in the manner indicated above with effect from 1st April, 2006. The said application was in the prescribed proforma under Clause 4.41 of the U.P. Supply Code, 2005.

17. In order to prevent a stalemate, the Respondent-Company sought the intervention of the Member Secretary (Energy), U.P., regarding reduction of the contracted load from 8 MVA to 1.25 MVA on account of the market conditions. According to Mr. Lahoty, this led to a meeting between the Managing Director of KESCO and the Executive Director of LML on 19th April, 2006, in which a decision was taken to reduce the load from 8 MVA to 1.25 MVA, as requested by the Respondent-Company, with effect from 1st April, 2006. The said decision of load reduction was, of course, subject to the condition that (i) LML would pay its monthly electricity dues, (ii) both LML and KESCO would accept the decision on dues pending in the Courts and (iii) the decision on load reduction would be sent for approval to the Regulatory Commission (UPERC), which would be acceptable to both the parties. Mr. Lahoty contended that once a decision had been arrived at between the Managing Director of KESCO and the Executive Director of the Respondent-Company, KESCO ought not to have raised inflated bills based on 8 MVA load thereafter.

A 18. Mr. Lahoty urged that while the aforesaid controversy was continuing, on 8th May, 2007, the Respondent-Company was declared to be a "Sick Industrial Company" under Section 3(1)(o) of SICA. In addition to the above, the BIFR also invoked its jurisdiction under Section 22(3) of SICA on 22.10.2007 B directing that (i) against arrears, KESCO would continue to accept Rs.5 lakhs per month, (ii) current bills would be paid on actual consumption basis and (iii) KESCO would not resort to any coercive measures such as disconnection of supply. According to Mr. Lahoty, the Respondent- Company has been C strictly adhering to the said order of the BIFR and has in the process already liquidated about Rs.3.09 crores of the outstanding dues. Mr. Lahoty reiterated that although the Respondent-Company had complied with the provisions of the Supply Code and also complied with the payment schedule as D per the agreement dated 3rd August, 2007, and the order dated 22nd October, 2007, passed by the BIFR in the light of Annexure 6.5 to the Supply Code, KESCO went on raising monthly electricity bills on the basis of 8 MVA which compelled the Respondent-Company to file Writ Petition (C) No.24900 of 2009 before the Allahabad High Court, inter alia, for a direction E upon the Petitioner-Company that the load stood reduced from 1st April, 2006. It was submitted that all the submissions made on behalf of KESCO relating to the application for load reduction, were not in accordance with the provisions of the Code and in the absence of any stay order by any Court or F Forum in respect of arrears, the provisions of Clause 4.49 was not fulfilled. However, all the issues raised by KESCO were negated by the Division Bench of the High Court in its impugned judgment. Mr. Lahoty submitted that having regard to the decision of the Rajasthan High Court in *Modern Syntax* G *(I) Ltd. Vs. Debts Recovery Tribunal, Jaipur* [AIR (2001) Raj. 170) which in its turn is based on the judgment of this Court in *Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co.* [(1986) 2 SCC 382], wherein it was held by this Court that the object of a Relief Undertaking Act is to sub-serve the public

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interest and to prevent unemployment in particular, the relevant provisions are to be given a liberal interpretation. A

19. Mr. Lahoty also submitted that in clause 4.49 of the Code prior to its amendment, there was an option of furnishing a Bond and filing an instrument in the nature of a Bond, apart from furnishing a Bank Guarantee and no fault could, therefore, be found with the affidavits and the Bond submitted on behalf of the Respondent-Company. It was submitted that since no shortcoming or illegality was mentioned in the decision taken by the Managing Director of KESCO and the Executive Director of LML and since the load reduction application was to be considered as per the unamended Code, nothing further was required to be done by the Respondent-Company after the said decision was taken on 19th April, 2006. It was urged that it was in the said context that the Division Bench observed that KESCO's stand in raising the monthly bills on the basis of 8 MVA contracted load was wholly unjust and unfair, more particularly when the Respondent No.1 Company was on its part complying with the conditions of payment of the monthly bills based on actual consumption and instalments towards the arrears. B C D E

20. Referring to the exercise of power by the UPERC under Section 23 of the Electricity Supply Act, 2003 and Clause 9.5 of the Supply Code, it was submitted that the same was a separate regime in the larger public interest with the sole object of preventing unemployment and loss of production in order to serve a social cause. It is in that context that it was recorded that only current dues were to be realized from a "Relief Undertaking" or a "Sick Industry" from whom only current dues would be realized and as far as the past dues are concerned, the same would be recovered in equal monthly instalments. As far as late payment sur-charge are concerned, the same would be subject to the orders of the BIFR under the SICA or the State Government under the 1966 Act. It was submitted that the said provisions of paragraph 8(c) and (d) of Annexure 6.5 to the F G H

A Code squarely applied to the case of the Respondent No.1 Company after it was declared as a "Relief Undertaking" on 24th June, 2004, and as a "Sick Industry" by BIFR on 8th May, 2007, but with effect from 31st August, 2006.

B 21. It was then submitted that even though KESCO was fully aware of the pendency of arrears, it decided to enter into an arrangement for load reduction as it was satisfied that the said decision was in the interest of both KESCO and LML and was warranted by the circumstances then existing. Since the C arrangement was to the full satisfaction of KESCO it itself recommended to the Regulatory Body that KESCO's decision to reduce the load from 8 MVA to 1.25 MVA may be approved, notwithstanding the pendency of arrears. Mr. Lahoty submitted that being a public undertaking it did not lie in the mouth of KESCO to try to wriggle out of a conclusive decision which had D been acted upon for at least four years.

22. A further submission was made by Mr. Lahoty to the extent that Respondent No.1 Company had secured KESCO by an amount of Rs.64 lakhs approx. which was deposited by E the Respondent No.1 Company as per Clause 4.20 of the Supply Code, and the same could be utilized by KESCO in any eventuality. When against the excess security deposit an amount of Rs.65 lakhs approximately was found to be surplus, the Respondent-Company permitted KESCO to adjust the total F amount of Rs.84 lakhs as late as in October, 2009, which would show the bonafides of the Respondent No.1 Company.

23. Mr. Lahoty concluded his submissions by submitting that because of the financial hardship under which the Respondent No.1 Company was functioning, both the State G Government as well as the BIFR had shown a great deal of concern and that the Respondent-Company is continuing to pay Rs.5 lakhs in monthly instalments towards arrears, along with the current dues, and that it was in no position to provide any Bank Guarantee as demanded by the Petitioners. Mr. Lahoty H submitted that a public authority should not be allowed to exert

pressure when the Respondent-Company was complying with its commitments and the order passed under Section 22(3) of SICA by BIFR. Mr. Lahoty submitted that the Special Leave Petition was without any merit and was liable to be dismissed.

24. The facts of this case are relatively simple and straightforward. What is difficult to comprehend is the inscrutable manner in which decisions arrived at in common are sought to be negated on account of bureaucratic lethargy. The case of the Respondent-Company, which is not denied on behalf of the Petitioners, is that owing to market fluctuations the Respondent-Company had to put a halt to its manufacturing activities and to make a representation to the State Government for declaring it to be a "Relief Undertaking" under the relevant provisions of the U.P. Industrial Undertaking (Special Provisions for Prevention of Unemployment) Act, 1966. Responding to the said representation, the State Government issued a notification on 24th June, 2004, suspending all contracts, agreements and other instruments in force for a period of one year leading to strikes and complete disruption of the work of the Respondent No.1-Company, impelling the Respondent-Company to apply to the Petitioners for reduction of the contracted load from 8 MVA to 1.25 MVA from 1st April, 2006. The materials on record indicate that as a result of such representation a meeting took place between the Managing Director of KESCO and the Executive Director of the Respondent-Company on 19th April, 2006, wherein a decision was taken to reduce the load as requested by the Respondent-Company with effect from 1st April, 2006, on certain terms and conditions, which have been set out hereinabove in paragraph 18. Apart from the above, the Respondent-Company was also declared as a "Sick Company" under SICA on 8th May, 2007, and an order was passed by BIFR under Section 22(3) of SICA on 22nd October, 2007, *inter alia*, directing that KESCO would continue to accept Rs.5 lakhs per month against the arrear dues together with the current dues on the basis of the actual consumption. What is of significance is that despite compliance

A by the Respondent No.1-Company with the said order the Petitioners continued to raise bills on the Respondent-Company on the basis of 8 MVA load, although, it had agreed to reduce the same from 8 MVA to 1.25 MVA with effect from 1st April, 2006.

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25. This case is an example of how a positive decision taken to help a struggling industry to find its feet can be scuttled by legalese, although, an agreement had been reached between the parties regarding payment of the arrears in instalments along with the dues, and despite the same being C duly followed by one of the parties to the agreement. The threat to yet again disrupt its manufacturing operations looms large on the horizon on account of the inability of the Respondent No.1-Company to comply with the provisions of Clause 4.41 read with Clause 4.49 of the U.P. Electricity Code, 2005. On D 31st March, 2006, the outstanding dues of the Respondent-Company was Rs.8.42 crores and when Clause 4.49 was amended, the Respondent-Company was asked to submit a Bank Guarantee/Bond to secure the amount of Rs.10.24 crores outstanding as arrears on that date. In compliance thereof, the E Respondent-Company duly furnished a Bond on 17th June, 2007, which was not accepted by the Petitioners on the ground that it did not secure the outstanding dues of the Petitioner No.1 and were not to its satisfaction. As a result of the above, although, the Petitioners were fully aware of the precarious F financial condition of the Respondent-Company and having agreed to reduce the contract load from 8 MVA to 1.25 MVA, it refused to do so on the ground that the Bond provided did not secure the outstanding dues, resulting in a vicious circle of events. On the one hand, the high MVA load continued to G contribute to the raising of high electricity bills, which the Respondent-Company was not able to pay, and, on the other hand, the Respondent-Company continued to suffer further financial losses on account thereof.

26. An argument had been advanced on behalf of the

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Petitioners that in the unamended provisions of Clause 4.49, provision had been made for the defaulting Company to furnish a Bond and as an alternative, to furnish a Bank Guarantee, apparently to assuage the aggravated economic conditions. In the amended provisions of Clause 4.49 the furnishing of a Bond by way of security was excluded. However, the discretion not to accept such Bond always lay with the Petitioners, giving them the discretion not to accept the Bond furnished by the Respondent-Company. That is exactly what has happened in the instant case. While agreeing to give the Respondent-Company the benefit of a reduced MVA, the Petitioners had prevented the Respondent-Company from accessing such privilege by continuing to raise bills on the basis of the high MVA which the Respondent-Company apparently was unable to bear on account of its financial conditions. As a result, instead of helping the Respondent-Company to come out of its financial crisis, the Petitioners have prevented the Company from doing so by refusing to lower the load from 8 MVA to 1.25 MVA, as agreed upon. It is not the case of the Petitioners that the agreement which had been arrived at between the Managing Director of the Petitioners and the Executive Director of the Respondent-Company, had been breached by the Respondent-Company. On the other hand, it has been categorically contended by the Company that it had scrupulously given effect to the said agreement as also the order of the BIFR dated 22nd October, 2007 upon the Respondent No.1-Company being declared a Sick Industrial Company under Section 3(1)(o) of SICA on 8th May, 2007.

27. It is apparent that while passing the impugned order, the High Court lost sight of the said order of the BIFR and confined itself to the provisions of Clauses 4.41 and 4.49 of the U.P. Electricity Supply Code, 2005 framed under Section 50 of the Electricity Code, 2003. If the Respondent No.1-Company is to revive, and, thereafter, survive, a certain amount of consideration has to be shown, which was fully realized by the Petitioners themselves, but they allowed themselves to be

A tied up in knots over compliance with the provisions of Clauses 4.41 and 4.49 which are Rules framed for application in special cases in order to help industries which had fallen on difficult days, to recoup its losses and to bring its finances on an even keel.

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28. There is no dispute that pursuant to an application made on 31st March, 2006 by the Respondent No.1-Company, praying for the reduction of the contract load from 8 MVA to 1.25 MVA with effect from 1st April, 2006, a Meeting had been held between the Managing Director of KESCO and the C representatives of the Respondent-Company in which a decision was taken for reduction of the load with certain conditions. There is also no dispute that on the said date itself KESCO conveyed its agreement for reduction of load to the U.P. Electricity Regulatory Commission and sought its formal D approval and that no objection was raised by the Commission with regard to the said decision except to indicate that the said decision would have to be implemented strictly in accordance with the Electricity Supply Code, 2005. There is also no dispute that when the decision was taken on 19th April, 2006 to reduce E the contract load, the unamended version of Clause 4.49 of the Code was in existence and that the same provided for submission of either a Bank Guarantee or a Bond or any other instrument to the satisfaction of the licensee of the equal amount of pending dues. The only problem which has arisen is F KESCO's decision not to accept the Bond given by the Respondent-Company on the ground that it did not provide sufficient security for the outstanding dues. In the totality of the existing circumstances, of which KESCO was fully aware, the decision not to accept the Bond was not in accordance with G the decision arrived at on 19th April, 2006 to reduce the contract load from 8 MVA to 1.25 MVA. In fact, the Respondent-Company had been declared to be a Relief Undertaking by the State Government on an application dated 24th June, 2004. Furthermore, soon after the decision was arrived at to lower H the contract load, the Respondent-Company was also declared

as a Sick Company on 8th May, 2007 and the BIFR, while considering the revival of the Respondent-Company by its order dated 22nd April, 2007, directed KESCO to continue to accept Rs.5 lakhs per month against the arrears apart from payment of the current electricity bills on actual consumption basis and also not to adopt coercive measures to disconnect the supply of electricity of the Respondent-Company. As indicated hereinabove, the result of the continued insistence of KESCO that a Bank Guarantee should be provided by the Respondent No.1-Company in respect of its outstanding dues, had the effect of negating the decisions to revive the Company.

29. We are, therefore, of the view that no interference is called for in this petition in regard to the impugned order of the High Court. The Special Leave Petition is, accordingly, dismissed, but this will not prevent the Petitioner-Company from taking appropriate steps against the Respondent-Company in the event the latter Company commits default in paying the instalments as directed by the BIFR towards the arrears or in respect of the current electricity bills.

30. There will be no order as to costs.

N.J. Special Leave Petition dismissed.