



TAMIL NADU ELECTRICITY CONSUMERS' ASSOCIATION

Regd. No. 181-8524/1998 – **CIN.No.** U37102TZ1998GAP008524

1st Floor, SIEMA Building, 8/4, Race Course, Coimbatore - 641 018

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TECA:2023-24:CIR/014

May 22, 2023

To All Members

CIRCULAR

Dear Members,

Sub: Supreme Court Order - Purchasers are now made liable to pay the arrears of electricity charges not paid by the Sellers-Regarding.

Ref: Supreme Court Order in Civil Appeal No.2109-2110 of 2014 dated 19.05.2023

We would like to intimate our members that vide the above referred Judgement of the Hon'ble Supreme Court of India has passed an order stating that, any auction purchaser of any asset/stressed asset, either through SARFAESI Act 2002 or by any other means, is now made liable for paying the arrears kept pending by the seller, in the matters relating to electricity related charges. The Salient features of the judgement are as follows.

"I. Conclusions

328. The conclusions are summarised below:

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

b. 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;

c. 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;

d. 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;



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e. 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;

f. 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;

g. 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;

h. 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;

i. 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

j. 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."

Accordingly, we advise our members to take utmost care while purchasing any stressed asset or any other asset, either as an auction purchaser or otherwise and can attempt to get a NOC from the TANGEDCO, before participating in the auctions / purchases or otherwise the auction purchaser alone would be responsible for making payment of the arrears kept unpaid by the seller / banker.

We are enclosing the soft copy of the Order passed by Hon'ble Supreme Court for the reference of our members.

With Warm Regards

N. Pradeep
President