IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.60 of 2012

Before:
Mr. Justice Irfan Saadat Khan &
Mr. Justice Zafar Ahmed Rajput

Dates of Hearing: 27.01.2014, 03.02.2014, 13.03.2014 & 19.03.2014.

Date of decision: .04.2014.

Mr. Abid S. Zuberi, Advocate for the appellant Karachi Electric Supply Company.

Mr. Abrar Hasan, Advocate for the respondent No.1 Karachi Water & Sewerage Board

Mr. Dilawar Hussain, Standing Counsel for the respondent No.2 Federation of Pakistan.

Mr. Meeran Muhammad Shah, Additional Advocate General Sindh for the respondent No.3 Province of Sindh.

None for the respondent No.4 City District Government Karachi.

O R D E R

IRFAN SAADAT KHAN, J:- This High Court Appeal (HCA) has been filed against the order dated 25.04.2012 passed by the learned Single Judge of this Court in Suit No.1263 of 2011 whereby three Civil Miscellaneous Applications i.e. (1) CMA Nos.10555/2011, under Order XXXIX Rules 1 & 2 CPC, (2) 10556/2011, under Order XXXIX Rules 1 & 2 C and (3) 2737/2012, under Order XXXIX Rule 4 CPC read with Section 151 CPC, filed by the respondent No.1/plaintiff, were allowed.

2. Briefly stated the facts of the case are that the Karachi Electric Supply Corporation (KESC) is a privately owned utility company and

is engaged in the business of generation, transmission and distribution of electricity within its licensed area spread over to Karachi and its suburbs upto Dhabeji, Gharo in Sindh and Hub, Uthal, Vindhar and Bela in Baluchistan and the respondent No.1 i.e. Karachi Water & Sewerage Board (KW&SB) is one of its consumer. The petitioner entered into an Implementation Agreement (hereinafter referred to as "I.A") dated 14.11.2005, which subsequently was amended on 13.04.2009. Only the point concerning the present HCA is the interpretation of the Article II of the said I.A. It was claimed by KESC/appellant that since the KW&SB/respondent No.1 has failed to pay the legally due bills hence the appellant has the legal authority to disconnect their electricity supply. Whereas, according to the respondent No.1, as per the said Article of I.A, they cannot do the same. However, when the appellant disrupted the electricity of the respondent No.1 or issued a show cause notice, a suit bearing No.1263/2011 was filed by the respondent No.1 against the present appellant on the ground that the appellant cannot disrupt or disconnect the electricity, especially in view of Article II of the said I.A. The respondent No.1 moved abovementioned applications in Suit No.1263/2011 filed by the KW&SB and the learned single Judge, after hearing the parties, vide the impugned order has restrained the KESC/appellant from disrupting, discontinuing or reducing the electricity supply to the respondent No.1 on account of non-payment of electricity charges and was further directed to comply with the other terms of Article-II, which inhere to benefit of the KESC. It is against these findings that the present HCA has been filed.

3. Mr. Abid S. Zuberi, Advocate has appeared on behalf of the appellant and submitted that the order passed by the learned single Judge is not in accordance with law as, according to him, the

respondent No.1 is their defaulter of a huge and hefty amount of more than 18 billion rupees, hence when the respondent No.1 is not willing to pay the said amount, the appellant would be left with no alternative but to disrupt the electricity, since the appellant also has to make certain arrangements with regard to purchase of Furnace Oil and other raw material etc. for producing the electricity to a very large area and if its consumers /customers would not pay the bills, very soon the company would go bankrupt and would become a defaulter. While elaborating his viewpoint, the learned counsel states that a number of notices were issued to the respondent No.1 for clearing its bills but it is strange to note that even after admitting the claim of the appellant the respondent No.1 at present is only paying to the KESC a peanut amount of Rs.5 million per month, which amount, according to him, is in fractions if compared with the outstanding amount and the ever increasing current bills. Learned counsel has further stated that the suit was filed by the respondent No.1 with mala fide intention to withhold the amount payable by the respondent No.1. He states that the said restraining order passed by the learned single Judge is without considering the material facts, as the parameters as enshrined in Order XXXIX Rules 1 & 2 of CPC are not fulfilled in the instant case. Learned counsel further states that even though efforts were made by the appellant for an amicable settlement of the dues but from the attitude of the respondent No.1 it seems that they are bent upon neither to pay the current bills nor the outstanding dues but are adamant that their electricity should not be disrupted /disconnected. Learned counsel states that no doubt the respondent No.1 is his “Strategic Customer” (St. C) but it does not mean that as per Article II of I.A they have been absolved from making any payment in respect of the electricity consumed by them. He further states that though KW&SB is not a party of the I.A but since they are a beneficiary of the said I.A hence, as

per the privity of contract, they are under the legal obligation to pay the outstanding dues. He further states that the respondent No.1 at this juncture cannot go beyond the scope of its pleadings.

4. The learned counsel further states that from the perusal of the impugned order, passed by the learned single Judge, it appears that a final decision at an interlocutory stage has been given as, according to him, the learned Judge has categorically stated that “I have come to the conclusion” and “I am firmly of the view” which fully demonstrate that he has passed a final order at an interlocutory stage. Learned counsel further states that much emphasis has been laid down by the learned Judge on the ground that privity of contract does exist between the appellant and the respondent No.1 though the respondent No.1 is not a signatory of the I.A and has in this regard relied upon a number of decisions given by the foreign Courts. As per the learned counsel the learned single Judge has ignored the fundamental principle of law that a contract can only be enforced by and between the signatories of that contract and a stranger to the contract, which in the present case is KW&SB (the respondent No.1), cannot rely upon the said agreement or seek enforcement of the same or seek any benefit arising out of that contract between two other parties.

5. Learned counsel has also attacked that the law making authority is the legislature and since some food for thought have been given by the learned Judge to the lawmakers which, according to him, falls outside his domain. Learned counsel further submitted that though the learned Judge has directed the appellant to firstly approach the Government of Pakistan (GoP) for recovery of its outstanding dues and only if the GoP refuses to pay the same, they have the remedy to take appropriate action against the respondent No.1 which finding, according to him, is also not based on proper appreciation of facts of

the case. He further submits that exhaustive efforts have been made by the appellant by writing a number of letters to the GoP to clear the outstanding dues, which was not done even till date, hence, the appellant is left with no alternative but to take appropriate action against the respondent No.1. In the end learned counsel prayed that the impugned order passed by the learned single Judge may be set-aside. In support of his above contentions, the learned counsel has relied upon the following decisions:

1. *Hyder Ali Bhimji V. Vth Additional District Jude, Karachi South (2012 SCMR 254)*
2. *Ilyas Ahmed V. Muhammad Munir (PLD 2012 Sindh 92)*
3. *United Bank Limited V. Ahsan Akhtar (1998 SCMR 68)*
4. *Islamic Republic of Pakistan V. Muhammad Zaman Khan (1997 SCMR 1508)*
5. *Muhammad Sharif V. Sh. Muhammad Amin & others (PLD 1970 Lahore 283)*
6. *Allah Wasaya V. Sardar Shah (PLD 1984 Lahore 59)*
7. *Mastersons V. Ebrahim Enterprises (1988 CLC 1381)*
8. *Tweddle V. Atkinson [(1861) 1 B&S; 121 ER 762]*
9. *Dunlop Pneumatic Tyre Company Ltd V. Selfridge and Company Ltd. [1915] AC 847; [1915] UKHL 1*
10. *Midland Silicones Ld. V. Scruttons Ltd. [1962] 1 All ER 1; [1961] UKHL 4*
11. *Beswick V. Beswick [1967] 2 All ER 1197; [1967] UKHL 2*
12. *Krishna Lal Sadhu and another V. Mt. Promila Bala Dasi (AIR 1928 Calcutta 518)*
13. *Thirmulu Subu Chetti V. Arunachalam Chettiar (AIR 1930 Madras 382)*
14. *M.C Chacko V. State Bank of Travancore (AIR 1970 SC 504)*
15. *Executive District Officer (Revenue), District Khushab at Jauharabad V. Ijaz Hussain (2011 SCMR 1864)*
16. *Wattan Party & Another V. Federation of Pakistan (PLD 2011 SC 97)*

6. Mr. Abrar Hasan Advocate, on the other hand, has appeared on behalf of the respondent No.1 and vehemently opposed the instant

HCA and stated that perusal of the Article II of I.A would reveal that in case the St.C fails to pay the amount, the GoP will make the payment hence no adverse inference can be drawn against the respondent No.1. He further states that a perusal of the order passed by the learned single Judge would reveal that, through an exhaustive and erudite order, the learned Judge has threadbare each and every aspect raised by the learned counsel for the appellant and through his detailed order has dealt with the issue with regard to interpretation of the I.A and thereafter came to the conclusion that the respondent No.1 has been able to make out a prima facie case for grant of injunction. Learned counsel states that the learned Judge has taken pains to discuss the issue of privity of contract by placing reliance on a number of foreign judgments and only thereafter came to the conclusion that the respondent No.1 has a prima facie case for the grant of injunction. Learned counsel has also invited our attention to various clauses of Article II that in order to recover the amount the appellant is required to take steps with the GoP, which are essence and spirit of I.A, which have not been done.

7. The learned counsel has further stated that no doubt the respondent No.1 is under the legal obligation to pay the bills of the appellant but, according to him, a complete mechanism in this behalf has been given in the I.A, which first has to be complied with by the appellant. He states that from the pleadings of the appellant it is evident that such exercise has not been done by the appellant and hence the learned Judge was fully justified, upon going through the facts of the case, to grant restraining order, since it was apprehended that if the electricity of the respondent No.1 is disrupted /disconnected, the whole Karachi city as well as other areas where water is being supplied by the respondent No.1 would be badly effected and a law and order situation

would be created. He states that previously also when the electricity of the respondent No.1 was disconnected a law and order situation was created and upon the intervention of the high-ups, including the Hon'ble Supreme Court of Pakistan, the electricity was restored. He, therefore, prays that this HCA being misconceived may be dismissed. In support of his above contentions, the learned counsel has relied upon the following decisions:

1. *Syed Alamdar Hussain V. Muhammad Ramzan and 5 others (1976 SCMR 347)*
2. *Sardeel and another V. Mst. Niamat alias Mst. Khurshid (1988 CLC 394)*
3. *Farooq Hassan and another V. International Credit and Investment Company and another (1996 CLC 507)*
4. *Agha Saifuddin Khan Vs. Pak Suzuki Motors Company Limited and another (1997 CLC 302)*
5. *Sajjad Ahmad Vs. Canon How Thomas [2007 CLC 1017 (2)]*
6. *Muhammad Zareef Khan and another Vs. Muhammad Maroof and 6 others (2009 YLR 2454)*
7. *Taimur Usman Khawaja and others Vs. Ali Muhammad Shaikh and others (2009 YLR 171)*
8. *Muhammad Asad and another Vs. Muhammad Tariq and 3 others (2010 MLD 1354)*
9. *Sayyid Yousaf Hussain Shirazi V. Pakistan Defence Officers Housing Authority and 2 others (2010 MLD 1267)*

8. Mr. Dilawar Hussain, Standing Counsel has appeared on behalf of the respondent No.2 and has adopted the arguments of Mr. Abrar Hasan and states that the comments filed by the respondent No.2 are the complete answer to the allegations raised by the appellant.

9. Mr. Meeran Muhammad Shah, Additional Advocate General Sindh has appeared on behalf of the respondent No.3 and has adopted the arguments of Mr. Abrar Hasan. However, nobody has appeared on behalf of the respondent No.4.

10. We have heard all the learned counsel for the parties and have also perused the record, the law, the decisions relied upon and the written synopsis filed by them.

11. Before proceeding, we deem it expedient to firstly reproduced herein below Article 11 of the 1.A :-

"IMPLEMENTATION AGREEMENT
BETWEEN GOP AND KESC

ARTICLE II
STRATEGIC CUSTOMER ASSURANCE

2.1 The Parties recognize that the Company has Strategic Customers who, in view of the security considerations, must be supplied electrical power by the Company at all times without interruption in accordance with the requirements of the Strategic Customers from time to time. The Company undertakes not to disrupt, discontinue or reduce the supply of electrical power to the Strategic Customers at any time whatsoever. The Company shall ensure that all equipment (including metering systems) which is required to deliver and record the delivery of electrical power to Strategic Customer shall, at all times, remain in working order so as to accurately and completely deliver and record the delivery of electrical power to Strategic Customers. In the event of any disruption, discontinuance or reduction of the supply of electrical power to any Strategic Customer(s) the Company shall:

(a) not later than the next Business Day, as its own cost, take all measures to restore the supply of electrical power to the Strategic Customer(s) in question in accordance with the normal requirements of such Strategic Customer(s);

(b) not later than the next Business Day notify GOP and the affected Strategic Customer(s) in writing of the occurrence of any disruption, discontinuance or reduction in the supply of electrical power of the Strategic Customer(s) in question, the reasons therefore and the measures being taken by the Company to ensure the immediate resumption of electrical power to the Strategic Customer(s) in question together with a forecast of the time required to ensure such resumption; and

(c) not later than the next Business Day notify GOP and the affected Strategic Customer of the resumption of the supply of electrical power to the Strategic Customer(s) in question in accordance with the usual requirements of such Strategic Customer(s).

2.2 The Company shall ensure that all Strategic Customers are invoiced in a timely and accurate manner in accordance with the regulations of the Company in force at the time as are applicable to like customers of the Company. In furtherance of the foregoing, the Company shall ensure that Electricity Invoices are delivered to Strategic Customers by registered mail or by courier and that such Electricity Invoices are correct and in accordance with the Tariff determines under the NEPRA Act and as notified in the Official Gazette, are based on meter readings and accurately reflect the use and consumption of electrical power by Strategic Customers.

2.3 If a Strategic Customer has failed to settle all or any part of an Electricity Invoice within thirty (30) days of the due date for payment thereof (prior to the application of surcharge) set out therein ("Defaulting Strategic Customer"), then the Company shall address a notice ("Meeting Notice") to the Strategic Customer(s) in question requesting a meeting not later than five (5) Days from the date of the Meeting Notice. The company shall employ all efforts to ensure that a meeting is held with the Defaulting Strategic Customer(s) in order to reach agreement between the Company and the Defaulting Strategic Customer.

2.4 The Company shall send GOP a notice ("Balance Notice") within a period of not earlier than fifteen (15) days from the date of Meeting Notice, if the Company and the Defaulting Strategic Customer have, as at that date, failed to reach settlement or agreement on any amount due under an Electricity Invoice addressed to a Defaulting Strategic Customer. In particular, the Balance Notice shall set out:

(a) the amount(s) due to the Company from a Defaulting Strategic Customer which remain outstanding under the terms of the Electricity Invoice(s) in question:

(b) the date(s) of the Electricity Invoice(s), the amount(s) thereof and the number of the associated invoices.

Provided however, that the Company shall not be entitled to send GOP a Balance Notice in respect of any Defaulting Strategic Customer in all or any of the following circumstances where the failure to pay all or any part of an Electricity Invoice arises from:

(i) a default in payment under an Electricity Invoice by a Defaulting Strategic Customer which default has occurred before the Closing Date;

(ii) any defect or malfunction in an electricity meter which has not accurately registered the units of electrical power consumed by a Defaulting Strategic Customer;

(iii) *an Electricity Invoice in which payment is required not on the basis of actual units of electrical power consumed but on an estimate thereof or any flat or other basis;*

(iv) *an Electricity Invoice which is based on a supply of electrical power to any entity other than the Defaulting Strategic Customer; or*

(v) *an Electricity Invoice which has been addressed to but has not been delivered a Defaulting Strategic Customer.*

In addition to the foregoing, the Company shall provide GOP with such other information, data or document as GOP may reasonably request in relation to any amount outstanding and payable by a Defaulting Strategic Customer to the Company.

2.5 *GOP shall no later than thirty (30) days from the date of receipt of the Balance Notice, respond thereto ("Response Notice") stating clearly which contents and claims in a Balance Notice GOP accepts ("Accepted Claims") and those contents an claims in a Balance Notice which GOP disputes as being payable ("Disputed Claims").*

2.6 *With respect to all Disputed Claims:*

(a) *GOP shall set forth its reasons for not accepting the same in the Response Notice; and*

(b) *GOP or the Company may submit the Disputed Claims to the Expert for resolution thereof.*

2.7 *All Accepted Claims shall be paid by GOP in Rupees in readily available funds to such account of the Company as may be designated in writing by the Company and paid in full by GOP to the Company no later than thirty (30) Days from the date of the Response Notice.*

Provided Accepted Claims shall not be payable by GOP to the extent that the Defaulting Strategic Customer in question has already made full or partial payment of the amount due from it under an Electricity Invoice prior to the period(s) referred to this Article 2.7.

2.8 *The Company shall notify GOP of the payment by a Defaulting Strategic Customer of all or any part of an Accepted Claim or a Disputed Claim no later than seven (7) Days after the date of receipt of payment by the Company. GOP and the Company agree that:*

(a) *GOP shall not be obliged to make payment in respect of any Accepted Claim only to the extent of the amount received by the Company as part of an Accepted Claim from a Defaulting Strategic Customer and any amounts due and owing from GOP to the Company shall be deemed to have been adjusted by the amount received by the Company from such Defaulting Strategic*

Customer on the date such amount is received by the Company. The receipt of any amount from a Defaulting Strategic Customer in respect of all or any part of an 'Accepted Claim after such Accepted Claim has been paid by GOP shall be forthwith notified to GOP and the amount of such surplus payment shall be dealt with in accordance with Article 2.9(c);

(b) GOP shall not be obliged to make payment in respect of any Disputed claim which may have been referred to the Expert for determination; and

(c) GOP shall be entitled to set-off any amount received from a Defaulting Strategic Customer (either as part of an Accepted Claim or a Disputed claim) which amount has already been received by the Company from GOP against any other amount which is due from any other Defaulting Strategic Customer to the Company. In the alternative, GOP may require the Company, by notice in writing to immediately refund the full amount of any amount received from a Defaulting Strategic Customer (either as part of an Accepted Claim or a Disputed Claim) which amount has already been received by the Company from a Defaulting Strategic Customer in which event the Company shall immediately disburse the amount in question to such account of the GOP as is stipulated in the said notice.

2.9 The Parties agree that the compensation methodology set out in this Article II represents the full and final amount payable by the Strategic Customer to the Company in the manner and method set out herein and the Company:

(a) agrees that any amount received as compensation under this Article II (whether by way of an Accepted Claim or as the result of a determination by the Expert) shall stand adjusted against amounts due to the Company from Defaulting Strategic Customer;

(b) agrees that no interest, profits or mark up shall be payable on any amount due to the Company from a Defaulting Strategic Customer;

(c) hereby waives to the fullest extent permitted by the Laws of Pakistan any further or additional claims it may have against the Defaulting Strategic Customers in respect of any amounts due to it in addition to the amounts set out herein; and

(d) agrees that the amount of compensation set forth in this Article II is reasonable.

> *2.10 Each Party shall cause its duly authorized representatives to meet and agree in writing, in good faith on any amendments that either GOP or the Company may require to rationalize the list of Strategic Customers attached to the Implementation Agreement as Schedule 1, including any update of said Schedule 1 to reflect any factual changes and the deletion of Strategic Customers therefrom. For a period of one (1) year from the Revised Closing Date, the Parties shall cause their duly authorized representatives to meet at least once in every three (3) months to rationalize Schedule 1 to the Implementation Agreement as aforesaid and thereafter the Parties shall cause their duly authorized representatives to meet for such purpose when requested by either the Company or GOP. In furtherance of the foregoing, the Parties shall cause their duly authorized representatives to enter into any contracts or agreements reflecting any amendments, from time to time, to Schedule 1 to the Implementation Agreement.*
>
> *[It may be noted that Article 2.10 was added by the amendment agreement of 2009]".*

12. From the reading of the various clauses, it is evident that the appellant had recognized that there are some St.C who in view of the considerations must be supplied electric power at all times without interruption. It is also an admitted fact that KW&SB is also one of the St.C, who is entitled that they must be supplied electric power without interruption. Even the counsel appearing before us for the KESC has admitted the fact that as per the terms of the I.A., KESC is duty bound to supply the electricity power to the KW&SB without interruption but the only point requiring determination is what would happen if KW&SB, being its St.C. fails to pay the electric bills, when the KW&SB is not a signatory of the I.A. In our view the answer to this question, which is the crux of the matter, is available in the I.A itself, wherein it has been mentioned that firstly an invoice will be issued to the St.C, like other customers. It has also been mentioned that if the St.C fails to settle all or any part of the electricity invoice then a notice requesting a meeting will be given and all efforts would be made to reach to an agreement between the company and the defaulting St.C. It is an admitted position that this exercise has been carried out between

the KESC and KW&SB. It is further mentioned that if no amicable settlement is reached between the KESC and the St.C, the KESC will send to GoP a notice as per clause 2.4. It is also an admitted position that this exercise also has been done. The matter thereafter would be governed as per clauses 2.5 & 2.6 ibid.

13. In our view the conditions as mentioned in clauses 2.5 & 1.6 have not been done yet. Clause 2.7 provides that all expected claims shall then be paid from the readily available funds by the GoP to the company, however, subject to the condition that if any amount has been paid by the St.C that will not be paid by the GoP. We, therefore, in view of the above observations find ourselves to be in total agreement with the findings recorded by the learned Single Judge of this Court that when admittedly the St.C i.e., KW&SB has not made payment in respect of the bills they have rendered themselves to be a defaulting St.C hence the KESC should have taken legal proceedings against the GoP as provided under I.A. rather than drawing adverse inference and disrupting/disconnecting the electricity of KW&SB. In our view the action of KESC is violative of the terms of the agreement entered between KESC and the GoP.

14. We further would like to observe that so far as the issue of privity of contract is concerned, the learned Single Judge has elaborately discussed the issue in an erudite manner and have discussed the issue in the light of a number of decisions given by the foreign Courts. At most all the decisions quoted before this bench by the learned counsel appearing on behalf of KESC have already been considered at length by the learned Single Judge and thereafter has reached to a conclusion that though the KW&SB is not a signatory of the contract but since a beneficiary hence the privity of contract is

applicable. For the sake of convenience, we would like to quote the observations made in this behalf by the learned Single Judge as under:-

> "*It must be kept in mind that ultimately, the relationship between an electricity utility and its customers is a contractual one. It may be overlaid and regulated by an elaborate statutory framework, but the essence of the relationship is simply a contract between two parties. If therefore, Article 2.9 has the effect of "absolutely" restricting KESC from enforcing its rights in respect of its contract with KWSB in the ordinary course in a court of law, as learned counsel for KWSB submitted, then Article 2.9 could fall foul of section 28. At the same time however, it is clear that Article 2.9 is intended to have some effect beyond simply being a contractual term between GOP and KESC. In other words, it also is part of the benefits that are conferred by Article II as a whole on Strategic Customers, and must therefore be given effect accordingly.*
>
> *51. In my view, the proper interpretation of Article 2.9 is to chart a middle course between the two 'extreme' positions taken by learned counsel for KESC and KWSB respectively. In my view, KESC is entitled to pursue its legal remedies against KWSB, but it must show (and this should be regarded as a heavy burden for it to discharge) that it has sought to avail, but without success, the remedies provided by the Implementation Agreement against GoP. Only then can it be regarded as entitled to have recourse against KWSB. Thus, Article 2.9 must be regarded as barring KESC from its remedies against KWSB not absolutely but only conditionally. At present the position is that KESC has not availed all the remedies available to it against GoP. No doubt it has sent the requisite notices under Article II. However, if no payment was forthcoming, it could, and ought, to have gone further and sought the remedies provided, e.g., by Article VI. It has not done so. No doubt this inaction was for sound commercial reasons. But since it has not followed the route provided by the Implementation Agreement, it cannot change course midway and start pursuing its remedies against KWSB.*
>
> *52. It will also be recalled that learned counsel for KESC submitted that its obligations under Article 2.1 were contingent upon GoP fulfilling its payment obligations. Since GoP has not yet done so, learned counsel submitted, in effect, that KESC was not bound to continue honouring its obligations under Article 2.1. I have carefully considered this submission, but in the end must conclude that it cannot be accepted as stated. Like Article 2.9, Article 2.1 is also cast in strong and peremptory terms. Strategic Customers "must" be supplied electric power "at all times without interruption" according to their requirements. KESC has given an undertaking not only to "disrupt, discontinue or reduce", but to immediately (within one Business Day) rectify the situation should any such event occur. In my view, when Article II is read as a whole, and in the context of the Implementation Agreement (especially Article VI), it is clear that the obligations undertaken by KESC in Article 2.1 stand on their own footing. There is a linkage with the payment obligations undertaken by GoP, but not in the manner that learned counsel submitted. As I have indicated in the preceding*

> *para, in my view KESC cannot pursue its legal remedies against KWSB on account of non-payment unless it has first exhausted the remedies against GOP under the Implementation Agreement. Article 2.1 ensures that even while KESC is doing so (and this may inevitably take some time if the remedies are invoked), it will continue supplying electricity to the Strategic Customers".*

15. Now coming to the last segment of this appeal that when a party makes out a prima facie case of irreparable loss and injury whether that party is entitled to grant of injunction. It is an admitted position that the KW&SB is responsible for supply of water and sewerage services to the Karachi city. KW&SB in this behalf require un-interrupted supply of electricity for more than 350 of its connections. However the electricity of the KW&SB is disrupted /disconnected what would happen thereafter could easily be imagined. Though, it does not mean that KW&SB is absolved/exempted from making any payment to the KESC now known as "K-Electric" as they are under the legal obligation not only to pay their current monthly bills but also the arrears if any under the law. Hence again the same question would arise as to what would happen in case they commit default in making the payment. The answer to this question in our view has already been given in the supra paragraphs of our order. Now the only point which requires consideration is whether KW&SB were able to make out a case of grant of injunction? In our view the answer to this question is in affirmative, by not only looking to the services they render to the citizens of Karachi on the basis of receiving electric supply but also with regard to the colossal losses suffered by them in case of such disruption of the electricity. The losses suffered by K- Electric due to non-payment of bills by KW&SB could be settled between K-Electric and the GoP but in case of losses suffered by KW&SB in our view, it is the KW&SB alone which has to bear its losses. Hence the findings of the learned Single Judge that the KW&SB did have a prima facie case

for grant of injunction, in view of the parameters as laid down under Order XXXIX Rules 1 & 2 CPC, is found to be impeccable.

16. We further would like to observe that grant of injunction is an equitable relief based on the principle of equity and is always discretionary depending upon the circumstances of each case and where a party is able to bring home its case that it has a prima facie case, balance of convenience/inconvenience and apprehension of irreparable losses or injury it is incumbent upon the Court to grant the discretionary relief. However, a Court may refuse to allow the said injunction, if the above parameters are not fulfilled. We, therefore, in view of the foregoing discussion do not find any force in the arguments of the learned counsel for the appellant. The instant appeal is therefore dismissed. We have also minutely examined the various decisions relied upon by both the learned counsel for the respective parties most of these citations have already been considered at length and order passed by the learned Single Judge. Before parting with the order we would like to make it clear that the observations made in this appeal will not affect the merits of the suit, which is pending adjudication, however, we expect that since the matter between two giants (as termed by the learned Single Judge) and is of great public importance that it would be taken up on priority basis and disposed of expeditiously.

JUDGE

JUDGE

Tahseen/PA.