

KSEB
കേരളാ വൈദ്യുത ബോർഡ്



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated Under the Companies Act, 1956)

Registered Office: Vydyuthi Bhavanam, Pattom,

Thiruvananthapuram-695004, Kerala

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ABSTRACT

WP(C) No.12772 of 2013(V) before the Honourable High Court of Kerala- Writ Petition filed by M/s. T. K Manufacturing Enterprises Private Limited -Revenue recovery - Reg.

Corporate Office (Supply Chain Management)

B.O.(FTD) No.430/2021(PC/39/1998-99/Kollam)dated, Thiruvananthapuram 10.06.2021

- Read:-1. W.O. No. PC 39/99-2000/7292 dated 06/07/2000 placed with M/s.TK Manufacturing Enterprises Private Limited by the Chief Engineer (CIELA).
2. Agreement No.22/CEC/2000-01 dated 09/10/2000 executed with M/s.T.K.Manufacturing Enterprises Private Limited.
 3. Proceedings of Chairman No.PC/39/98-99/Kollam/86 dated 05.04.2013
 4. Judgment dated 04/08/2020 in WP(C)No.12772 of 2013(V) of the Honourable High Court of Kerala.
 5. Note No. PC/39/1998-99/Kollam/1676 dated 28.05.2021 of Chief Engineer(SCM) submitted to Full Time Directors vide Agenda Item No.82/5/21.

ORDER

KSE Board issued work order read as 1st above with M/s T.K.Enterprises for the Manufacture and supply of 34200 Nos of 7m poles and 26800 Nos of 8m poles to the Electrical Circle, Kollam with the cost including transportation of the same to various destination under the jurisdiction of the above Circle and the firm had executed the agreement read as 2nd above. As per the agreement condition, the supply of PSC Poles had to be commenced from 06/12/2000, after establishing a pole costing yard. The firm failed to supply PSC poles, as per Agreement conditions and KSEB had decided to terminate the contract with the firm at the risk and cost of M/s.T.K.Enterprises vide B.O (FB)No.456/02/(TC4/PC/8/99/KLM) dated 04.04.2002. Subsequently the Bank Guarantee furnished by the contractor for Rs.1,47,342/- was encashed. The liability of the contractor was assessed provisionally by the Chief Engineer (IPDS) and informed the contractor vide letter dated 25.02.2004 for offer reply or to be heard in person before finalizing the liabilities. But the contractor did not respond. Later the Deputy Chief Engineer, Electrical Circle, Kollam vide letter dated 31.01.2012 reported that the total liability outstanding against the contractor is Rs.27,97,988/- and Revenue Recovery requisition for realizing that amount vide Requisition No.RR/2012/6775/4 dated 13/09/2012 was issued.

Then the Contractor vide letter dated 6.10.2012, addressed to the Chairman, KSEB stated that he had received a demand for revenue recovery by the Thahasildar, Chengannur which had been initiated by the Chief Engineer(SCM) with out serving a notice to him regarding the arrears demanded and requested a personal hearing before initiating any recovery proceedings against him. The District Collector Alapuzha requested a report from KSEB on the petition filed by the firm and a detailed report was given to the District Collector, Alapuzha vide letter dated 03.11.2012 of the Chief Engineer(SCM).

Later the Contractor Sri.Sundeep Abraham filed a Writ Petition No.29638/12 before the Hon'ble High Court of Kerala against the recovery proceedings against him. The Hon'ble High Court of Kerala in its judgment dated 03.01.2013 had disposed of the WP(C) No.29638 of 2012, directing the Chairman, KSEB to

consider the representation of the Contractor dated 6.10.2012, on merits within a period of six weeks from the date of receipt of a copy of the Judgment. Also the petitioner, the company as well as other affected parties shall be put on notice and heard in the exercise and the coercive proceedings initiated against the petitioner shall be put on hold till his representation to the Chairman is disposed of.

In compliance with the Judgment, the Chairman, KSEB conducted a hearing on 20.03.2013 with the Directors of the firm M/s.T.K.Manufacturing Enterprises Private Limited, Sri.Sundeep Abraham, Smt.Valsa Abraham, Sri.Rajeev Abraham. One of the Directors Sri.T.K.Abraham, had expired. The then Chairman, KSEB, after the hearing and verification of records concluded that the main contention of the petitioner is that KSEB has not issued any notice to him and proceeded with Revenue Recovery. On verification of records it is seen that on 18.02.2012, a registered notice with A/D, a demand notice for Rs.27.97 Lakhs, failing which RR proceedings will be initiated was served and received by the petitioner himself. As such there is no ground that the petitioner has been kept in the dark about the impending Revenue Recovery proceedings. Also, the petitioner's contention that RR proceedings are against the company and that though he had received the notice he could not respond since the company has not specially authorized him. The Chairman observed that, it is not particularly relevant in this case. The Chairman, KSEB in view of the directions contained in the Judgment of the Hon'ble High Court of Kerala dated 3.1.2013 in WP(C) No.29638 of 2012 disposed the representation of the petitioner dated 13.2.2013 vide proceedings read as 3 above.

Later Sri. Sundeep Abraham had filed another petition WP (C) No. 12772 of 2013 (V) before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala in its judgment read as 4th above, allowed the writ petition by setting aside the proceedings of the Chairman read as 3rd above. The Hon'ble High Court of Kerala also ordered that respondents will be at liberty to quantify the liability of the petitioner, if any, with notice and an opportunity of hearing to the petitioner and thereafter, proceed for recovery of the liability.

Meanwhile, in compliance with the Judgment read as 4th above, the Chief Internal Auditor KSEBL finalised the risk and cost amount of M/s. T.K. Enterprises to Rs.27,93,186/- and the Chief Engineer(SCM) issued a registered notice to Sri. Sundeep Abraham, Director of M/s. T. K .Manufacturing Enterprises Private Limited informing the liabilities by including GST as Rs.31,22,095 with interest @12% from 15/03/2012. There after a personnel hearing was conducted by the Deputy Chief Engineer(SCM) in charge on 16/10/2020 with Sri. Sundeep Abraham, Son of Late T.K.Abraham, Contractor, M/s.T.K.Manufacturing Enterprises Private Limited. It was informed to Sri. Sundeep Abraham that Revenue recovery proceedings will be initiated against the firm, if fails to remit the liability amount of Rs.31,22,095 with interest @ 12% from 15/03/2012 on or before 30/11/2020.

In the reply to the above letter, the petitioner requested to conduct a personnel hearing and based on the request of the petitioner a personnel hearing was conducted by the Chairman & Managing Director, KSEBL, as being the dispute resolution authority, with Sri. Sundeep Abraham on 16/02/2021. After the above personnel hearing, the Chairman & Managing Director, KSEBL remarked that a legal opinion is necessary due to the fact that revenue recovery initiated to the personnel property of Sri. Sundeep Abraham, but the contract was executed by the company.

The legal opinion was sought and the Legal Adviser & Disciplinary Enquiry Officer, KSEBL opined that It is trite law under the provisions of Companies Act, the Director of a private company limited by shares is not personally liable for the liabilities of the company as the company has a distinct entity from its share holders and Directors. Sri. Sundeep Abraham had executed the agreement in his capacity as Director of the M/s. T. K Manufacturing Enterprises Private Limited, but not in his personal capacity. Hence no recovery proceedings can be taken against the Director for recovery of any amount whatsoever due from

the company. However, there are no fetters in initiating recovery proceedings against the assets of the company for recovering the amount due.

The matter was placed before Full Time Directors as per note read 5 above. Having considered the matter in detail, the Full Time Directors meeting held on 31.05.2021 resolved to accord sanction to move for recovery of dues to KSEBL from the assets of the company, M/s T. K Manufacturing Enterprises Private Limited, Kallissery, based on the legal opinion.

Orders are issued accordingly.

By order of the Full Time Directors

**LEKHA .G.
COMPANY SECRETARY In Charge.**

To

The Chief Engineer (SCM)

Copy to:-

1. The Financial Adviser/The Legal Adviser & Disciplinary Enquiry Officer.
2. The Chief Internal Auditor/The Company Secretary ✓
3. The Chief Vigilance Officer
4. The Chief Engineer (IT)/The RCAO/The RAO.
5. The Executive Engineer, B&S Division, Angamaly
6. TA to the Chairman & Managing Director/Director (GE&SCM)/ Director (Distribution IT& HRM)/ Director (T & SO)/ Director (Generation - Civil)/Director(Planning and Safety)
7. PA to Director (Finance)/Secretary (Administration)
8. Library/Stock file.

FORWARDED / BY ORDER



Assistant Engineer