

COURT-I

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**APPEAL NO. 290 OF 2015 & IA NOS. 470 OF 2015, 11 OF 2016 & IA NO. 1470
OF 2018**

Dated: 12th November, 2018

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

BSES Yamuna Power Ltd.	...Appellant(s)
Vs.	
Delhi Electricity Regulatory Commission	...Respondent(s)

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan
Mr. Hasan Murtaza

Counsel for the Respondent(s) : Mr. Pradeep Misra
Mr. Manoj Kr. Sharma for R-1

ORDER

**IA NO. 1470 OF 2018 IN
APPEAL NO. 290 OF 2015**

Learned counsel for the Appellant has filed this application seeking the following relief:

- a) *Allow the present Application permitting the Applicant/Appellant to withdraw Issue No. 37A (Non-Tariff Income-Write Back of Miscellaneous Provisions) and Issue No. 60 (Arbitrary determination of efficiency factor for FY16)*

from Appeal No. 290 of 2015 in the appeal and give liberty to the Applicant/Appellant to pursue the said issues before the State Commission in proceedings arising from Order dated 28.03.2018 in Petition No. 69 of 2017 with all questions being kept open;

In the present appeal, several issues are raised at the stage of hearing arguments on merits. During the pendency of this appeal, the present application is being made seeking permission to withdraw the appeal so far as Issue No. 37A (Non-Tariff Income-Write Back of Miscellaneous Provisions) and Issue No. 60 (Arbitrary determination of efficiency factor for FY16) on the ground that the Respondent-Commission by Order dated 28.03.2018 while dealing with the issues of true-up upto FY 2016-17 and annual tariff for FY 2018-19 in Petition No. 69 of 2017 rendered a finding with regard to the aforesaid issues. Against the said order dated 28.03.2018 in Petition No. 69 of 2017, an appeal came to be filed before this Tribunal being Appeal No. 214 of 2018 on 46 tariff issues. A Review Petition is also filed before the State Commission on 15 tariff issues being Review Petition No. 31 of 2018. The issue of Write Back of Miscellaneous Provisions as a part of NTI has been raised by the Appellant only in Review Petition No. 31 of 2018 and has not been raised in Appeal No. 214 of 2018. During the proceedings before the State Commission, the

State Commission expressed its opinion that since the instant Appeal being Appeal No. 290 of 2015 is pending before this Tribunal wherein Write-Back of Miscellaneous Provisions is also one of the issues under challenge, the State Commission will not consider the said issue till the disposal of the present appeal.

With regard to Issue No.60 (Arbitrary determination of efficiency factor for FY16), the State Commission had in the said order dated 28.03.2018 accepted the stand of the Appellant on this issue and granted relief to the Appellant for the FYs 2012-13 to 2014-15. However, the same relief was erroneously not extended to FY 2015-16. Hence, the Appellant has filed the Review Petition No. 31 of 2018 before the State Commission. During the proceedings before the State Commission, the State Commission expressed its opinion that since the instant Appeal being Appeal No. 290 of 2015 is pending before this Tribunal wherein the issue of Arbitrary determination of efficiency factor for FY16 is under challenge, the State Commission will not consider the said issue till the disposal of the present appeal.

Therefore, the Appellant, as a measure of abundant caution, has come up with this application seeking leave to withdraw issue No.37A

(Non-Tariff Income-Write Back of Miscellaneous Provisions) and Issue No. 60 (Arbitrary determination of efficiency factor for FY16) from the present appeal with liberty to address the same in the review petition pending before the State Commission i.e., Review Petition No. 31 of 2018.

For the reasons set out above and in order to allow the Appellant to seek early disposal of the issues so far as Non-Tariff Income-Write Back of Miscellaneous Provisions and Arbitrary determination of efficiency factor for FY16, we are of the opinion that the directions sought in the application deserves to be allowed. Accordingly, in the interest of justice and equity, we dispose of this application reserving liberty to the Appellant to file necessary application before the State Commission seeking appropriate relief with regard to aforesaid Issue No. 37A and Issue No. 60. All contentions raised in the instant appeal so far as other issues are kept open. Accordingly, the Application is allowed. The Appellant shall carry out necessary amendments in the appeal within two weeks from today.

(S. D. Dubey)
Technical Member
ts/mk

(Justice Manjula Chellur)
Chairperson