

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**ORDER ON IA 18 OF 2016 IN E.P. NO. 2 OF 2015
IN APPEAL NOS.76 AND 82 OF 2013**

Dated: 5th February, 2016

**Present: Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

IN THE MATTER OF

**Eastern India Powertech Limited
(Formerly known as DLF Power Ltd.)
12th Floor, Galleria Building,
DLF City, Gurgaon
Haryana – 122009**

**..... Decree Holder/
Execution Petitioner**

VERSUS

**1. Assam Power Distribution Company Ltd.
Bijlee Bhawan, Paltan Bazar
Guwahari-781001**

**2. Assam State Electricity Board
Bijlee Bhawan, Paltan Bazar
Guwahari-781001**

**Judgment Debtors/
Respondents**

**3. Government of Assam
Represented by the Chief Secretary
Block-B, Assam Secretariat
Dispur, Guwahati 781006**

**4. Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar
G.S. Road, Sixth Mile
Guwahati, Assam-781001**

..... Respondents

Counsel for the Appellant ... Mr. Gopal Jain, Sr. Adv.
Mr. Many Seshadri
Mr. Abhishek Roy
Ms. Trishala Kulkarni

Counsel for the Respondent(s)... Mr. Avijit Roy and
Ms. Kankana for R-1 & R-2

Mr. Pragyan Sharma
Mr. Ravi Kant Pal and
Mr. A.K. Thakur for R-4

ORDER

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

The instant IA, being IA No. 18 of 2016, in Execution Petition No. 2 of 2015 in Appeal No. 76 and 82 of 2013, has been moved by the Decree Holder/Execution Petitioner under Section 120 of the Electricity Act, 2003 read with Order XXI Rule 41(3) and Order XXI Rule 37(1) of the Code of Civil Procedure, 1908, seeking to:

- (a) direct personal presence of the Chairman of Assam Power Distribution Company Ltd., Shri K.V. Eapen, before this Appellate Tribunal;
- (b) direct the Judgment Debtor to file an Affidavit stating the assets of the Judgment Debtor;
- (c) attach the bank accounts of the Judgment Debtors i.e. Assam Power Distribution Company Ltd., and Assam State Electricity Board with the State Bank of India, New Guwahati Branch, Assam-781021 to the extent of Rs. 9 crores with the direction to the concerned bankers to release the same to the decree holder forthwith; and
- (d) to pass any order that this Appellate Tribunal may deem fit and proper under the facts and circumstances of this case.

2. The contents of the IA No. 18 of 2016 are as under:

- (a) that the Execution Petition, being E.P. No. 2 of 2015, is pending before this Appellate Tribunal and, in the last hearing held on 21.12.2015, this Appellate Tribunal passed the following order:

“At this stage, we have been informed by the Registrar of this Tribunal that he has no official bank account. Hence the aforesaid cheque be returned to Mr. M.K. Adhikari,

General Manager (TRC), APDCL with the direction to issue a fresh cheque of the same amount in favour of the Execution Petitioner viz M/s. Eastern India Powertech Ltd. within 10 days from today.”

- (b) that this Appellate Tribunal had, vide its order, dated 18.11.2015, directed the aforesaid Judgment Debtors to make the payment of Rs. 9 crores failing which this Appellate Tribunal indicated that proceedings would be initiated against them. The order, dated 18.11.2015, passed by this Appellate Tribunal is as under:

“The learned counsel for the Execution Petitioner is also directed to inform in writing whether the Execution Petitioner has filed any petition for determination of tariff since 2009-10 onwards before the State Commission so as to enable the State Commission to determine tariff after undergoing the procedure laid down in Electricity Act, 2003 for which two weeks’ time is allowed.”

“..... We deem it proper to direct the respondent nos. 1 & 2 to deposit an amount of Rs. 9 crore within 10 days from today failing which we shall be constrained to proceed further as per the provisions of Order XXI CPC. We are to treat every entity at part whether it is a Government or non-Government body. This amount shall be subject to the adjustments subsequently. Post this matter for further hearing on 21st December, 2015.”

- (c) that in compliance of the aforesaid directions of this Appellate Tribunal, the present Decree Holder/Execution Petitioner, on 1.12.2015, filed the tariff petition for the years 2009-10 to 2014-15 before the Assam Electricity Regulatory Commission, however, the Judgment Debtor failed to comply with the order, dated 18.11.2015, of this Appellate Tribunal and, now, have again failed to comply with the order, dated 21.12.2015, passed by this Appellate Tribunal.
- (d) that one of the Judgment Debtors i.e. Assam Power Distribution Company Ltd., failed to comply with the order, dated

18.11.2015, of this Appellate Tribunal directing for the payment of Rs. 9 crores by the Judgment Debtor within 10 days for the period 2008-09. Accordingly, the Decree Holder/Execution Petitioner, on 8.12.2015, had filed an application, being IA No. 466 of 2015, seeking directions of this Appellate Tribunal to the Judgment Debtors amongst other thing for attachment of bank accounts of Assam Power Distribution Company Ltd. to the extent of Rs. 9 crores with the direction to the concerned bankers to release the same to the decree holder.

- (e) that the Respondents, on the date of hearing, i.e. 21.12.2015, which was much beyond the permitted 10 days granted by this Appellate Tribunal, malafily brought a cheque for Rs. 9 crores, however, in favour of the Registrar, Appellate Tribunal for Electricity. On this, the Appellate Tribunal being made aware of the fact that no account in favour of the Registrar of this Appellate Tribunal for Electricity existed, this Appellate Tribunal, vide its order, dated 21.12.2015, again directed the Judgment Debtors to issue a fresh cheque of Rs. 9 crores in favour of the Execution Petitioner within 10 days. Yet, the payments, as directed, have not been made by the Judgment Debtors to the Decree Holder/Execution Petitioner in compliance with the order, dated 21.12.2015, hence, the present Application has been filed by the Decree Holder/Execution Petitioner requesting this Appellate Tribunal to issue show cause notice as to why the officer-in-charge of the Judgment Debtor, which is the Managing Director/Chairman of the Assam Power Distribution Company Ltd., should not be committed to civil prison in execution of the said decree as well as for the filing of an affidavit stating the particulars of the assets of the Judgment Debtor; and/or for further steps to be initiated under the provisions of Order XXI and other applicable provisions of the Code of Civil Procedure, 1908.

- (f) that the Judgment Debtor is deliberately avoiding payment of the decretal amounts despite time being granted by this Appellate Tribunal and, therefore, it would be just and in the interest of justice, that execution of the decree be commenced against the movable and immovable assets of the Judgment Debtor.

3. We have heard the learned counsel for the Execution Petitioner/ Decree Holder on the IA, being IA No. 18 of 2016, on 19.1.2016. The copy of the said IA has already been furnished to the learned counsel for the Judgment Debtor and inspite of receiving copy of the said application, no objection has been filed, rather, the Judgment Debtor preferred not to appear before this Appellate Tribunal on 19.1.2016, under which circumstances the order was reserved.

4. After hearing and considering the contents of the instant Interim Application, being IA No. 18 of 2016, and perusing our earlier orders passed in Execution Petition, being EP No. 2 of 2015, we direct the personal appearance of the Managing Director/Chairman of the Assam Power Distribution Company Ltd. before this Appellate Tribunal and to show cause as to why he should not be committed to civil prison for non-payment of the aforesaid amount of Rs.9 crores and further direct him to file an affidavit stating the assets of the Judgment Debtor within two weeks.

PRONOUNCED IN THE OPEN COURT ON THIS 5TH DAY OF FEBRUARY, 2016.

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

√ REPORTABLE/NON-REPORTABLE

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