

Court-II
In the Appellate Tribunal for Electricity, New Delhi
(Appellate Jurisdiction)

Execution Petition No.2 of 2015
& IA Nos. 466/15, 482/15, 483/15, 78/16, 79/16 and 119 of 2016
in Appeal Nos.76 of 2013 and 82 of 2013

Dated : 20th July, 2016

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

Eastern India Powertech Ltd.

... Appellant(s)/Petitioner(s)

Versus

Assam Power Distribution Co. Ltd. & Ors.

..Respondent(s)

Counsel for the Appellant(s) : Mr. Manu Seshadri
Mr. Ajay Goyal
Mr. Abhishek Roy
Ms. Trishala Kulkarni

Counsel for the Respondent(s) : Mr. S.B.Upadhyay, Sr. Adv.
Mr. Avijit Roy,
Ms. Saki Jhakharia for R-1 & R-2
Mr. H.M.Sharma, APDCL
Mr. Pragyan Sharma
Mr. Ravi Kant for R-4
Ms. Prerna Priyadarshini for Intervenor

ORDER

Review Petition No. 11 of 2016:

Mr. Manu Seshadri learned counsel for the Review Petitioner/Decree Holder as well as Mr. S. B. Upadhyay, Sr. Advocate, Mr. Avijit Roy, Mr. Saki Jhakhari appearing for the main contesting respondent Nos. R.1 & R.2 along with Mr. Ravi Kant for R.4, appearing in Review Petition No.11 of 2016 (EP No.2 of 2015 in Appeal Nos. 76 of 2013 and 82 of 2013), seeking review of our order dated 18th May, 2016, passed in EP No.2 of 2015 have been heard, on certain grounds which have been mentioned in the said Review Petition. The

objections have also been filed to the said Review Petition. We have also gone through our order dated 18th May, 2016, passed in the aforesaid EP. Vide order dated 18th May, 2016, we have passed the following order:

“O R D E R

15. *In view of the above, we direct Assam Electricity Regulatory Commission to issue a notice to the rival parties to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grid of Assam Distribution Company, compute the actual amount due to EIPL after adjusting the payments made by APDCL and intimate the same for execution of the Petition No.2 of 2015, to this Tribunal with in two months from today positively.*

Post the Execution Petition for further orders on 20th July, 2016.”

2) The main apprehension of the Review Petitioner/Decree Holder is that the learned State Commission may, perhaps, not consider the observations made in paragraph 26 of the judgment dated 12th August, 2014, passed by this Appellate Tribunal in the aforesaid appeals, being Appeal Nos. 76 of 2013 and 82 of 2013. Mr. S.B.Upadhyay, Sr. Advocate appearing for the main contesting respondents/judgment debtor clarified the position by saying that all the directions given in the judgment dated 12th August, 2014 of this Appellate Tribunal shall be taken care of and same assurance is being given by the learned counsel appearing for the State Commission, which is Respondent No.4.

3) After hearing the parties and going through the matter in hand, we direct the Assam Electricity Regulatory Commission, respondent No.4, to compute the said amount in compliance of our interim order dated 18th May, 2016, passed in EP No.2 of 2015, after taking due care of all the directions given by this Appellate Tribunal. We hope that the learned State Commission will endeavor

to find out the directions given in the judgment of this Appellate Tribunal and then calculate the amounts in the light of our interim order dated 18th May, 2016.

4) We have been shown a paper by the Decree Holder, namely data required by the Hon'ble Commission for computation of amount payable to Eastern India Powertech Ltd. As per the learned counsel for the Execution Petitioner when the documents were submitted by the State Commission on 18th July, 2016, its Joint Director (Tariff) endorsed as "*Received subject to admission by the Commission*". We do not want to make unnecessary remarks against the State Commission under hope that this Commission namely, Assam Electricity Regulatory Commission, will understand its responsibility and legal obligations and discharge its duties in a legal and sincere manner without shirking from its liability. However, no request is being made by the State Commission for extension of the period meant for calculating the amount, which period is expiring today. We are, *suo motu*, allowing two months period to the Commission to complete its exercise without any excuse. At this stage, the learned counsel for Respondent No.4 submits that the Decree Holder has not filed the documents. We are restraining ourselves from passing any remarks against the learned Commission but what it has done on 18th July, 2016 we have quoted above. Every Commission is bound to receive papers filed by the party mentioning the date without putting any condition to the receipt. We hereby grant two more months to complete the exercise sincerely and honestly without any excuse or any ground whatsoever. In this view, ***Review Petition No.11 of 2016 is here disposed of.***

Post this EP No. 2 of 2015 on **28th September, 2016** for further hearing.

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

sh/kt