

**COURT-I**

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(APPELLATE JURISDICTION)**

**IA NO. 128 OF 2017 IN APPEAL NO. 47 OF 2015**

**Dated: 3<sup>rd</sup> March, 2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**Nabha Power Ltd. & Anr.**

**...Appellant(s)**

**Vs.**

**Punjab State Power Corporation Ltd. & Anr. ...Respondent(s)**

Counsel for the Appellant(s)

: Mr. S. Ganesh, Sr. Adv.  
Mr. C.S. Vaidyanathan, Sr.  
Adv.  
Mr. Aniket Prasoon  
Mr. Abhishek Kumar

Counsel for the Respondent(s) :

Mr. Matrugupta Mishra for  
Ms. Shikha Ohri for R.1

Mr. M.G. Ramachandran  
Ms. Ranjitha Ramachandran  
Ms. Poorva Saigal  
Mr. Shubham Arya for R.2

**ORDER**

The Appellant has challenged in this appeal Order dated 16/12/2014 passed by the Punjab State Electricity Regulatory Commission ("**the State Commission**") whereby the State

Commission has held that deemed exports benefits under Foreign Trade Policy 2009-2014 were not available to the Appellant as on cut off date and as a result the Appellant is liable to pass on the benefits actually availed under Mega Power Policy, 2009 to Respondent No.1. In this Application the Appellant has made the following prayers:

- (a) fix a very early & expeditious date of hearing in the Appeal for final disposal and undertake its hearing on a day to day basis in order to dispose of the same as early as possible;
- (b) pass an order restraining the Respondent NO.1, its servants and agents from taking any coercive action and making any deduction from the Monthly Invoices(s) to be issued by the Appellant under the PPA on account of grant of mega power project status to it and maintain the status quo till the present Appeal is decided by this Hon'ble Tribunal;
- (c) pass such further Order or Orders as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

Mr. S.Ganesh learned senior counsel for the Appellant on 20/05/2015 prayed for stay of the impugned order. On 20/05/2015 this Tribunal passed the following order:

“Since the main Appeal is already listed for hearing on 26.05.2015, list this I.A. No.196 of 2015 for hearing along with the main Appeal on 26.05.2015.”

On 26/05/2015 as the Appeal had to be heard on 01/07/2015 this Tribunal passed the following order:

“No order is necessary on the interim application as of today since we propose to hear the appeal on 01.07.2015.”

Thereafter on account of administrative reasons this Tribunal could not hear the appeal. Counsel for the Appellant submitted that in Appeal No.32 of 2015 filed by Talwandi Sabo Power Limited where similar issues were involved the Supreme Court had stayed the order impugned therein. The stay order came to be vacated on 06/02/2017. Therefore Talwandi Sabo Power Limited filed Interim Application for fixing the date of hearing of its appeal and also for the stay of the order impugned in that appeal. It is stated in the instant application that Respondent No.1 had extended parity with Talwandi Sabo Power Limited to the Appellant and had not taken any precipitative steps. It is stated in the instant application that by virtue of order dated 06/02/2017 passed by the Supreme Court vacating

the stay order passed in favour of Talwandi Sabo Power Limited the Appellant has got exposed to grave financial consequences considering that it was given parity by Respondent No.1 by not effecting deduction from the monthly invoices earlier. The Appellant has therefore filed the instant application for fixing date of hearing of this appeal and for stay of the impugned order. Counsel submitted that it has good case on merits and good chance of success. Counsel submitted that this Tribunal has not rejected the prayer of the stay made by the Appellant. The Appellant was not party to the proceedings before the Supreme Court and therefore the Appellant cannot move the Supreme Court. Counsel submitted that in-much-as this Tribunal has fixed the appeal for final hearing and in fact final hearing has started the impugned order may be stayed particularly when so far Respondent No.1 has not effected any deductions from the Appellant's running bills.

Mr. Ramachandran learned counsel for Respondent No.1 on the other hand strenuously opposed the prayer for stay. He submitted that Appellant sought parity with Talwandi Sabo Power Limited to suit its convenience and now it is trying to

delink itself from the order passed Talwandi Sabo Power Limited's case. Counsel severely commented on the conduct of the Appellant and submitted that no case is made out for grant of interim relief.

Having heard counsel for the parties, having considered the fact that the prayer for stay made by the Appellant has not been rejected by this Tribunal so far and also having considered the fact that the appeal is set down for final hearing and is in fact being heard by this Tribunal we deem it appropriate to pass the following interim order which shall be in place during the pendency of the instant appeal.

Respondent No.1 can effect deduction in future monthly running bills of the Appellant. However, so far as arrears concerning subject disputed issue are concerned the Appellant shall furnish Bank Guarantee in favour of Respondent No.1 of any scheduled bank/nationalised bank covering the said amount of arrears within two weeks from today. On such Bank Guarantee being furnished, Respondent No.1 shall not deduct any amount from the running bills of the Appellant towards the

arrears. The said Bank Guarantee shall be kept alive till the hearing of final disposal of the appeal. Needless to say that the said Bank Guarantee shall abide by the final order that may be passed by this Tribunal.

Interim Application is disposed accordingly.

**(I. J. Kapoor)**  
**Technical Member**

**(Justice Ranjana P. Desai)**  
**Chairperson**

Ts/vg