In the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

DFR NO.2209 OF 2016

Dated: 21st November, 2016.

Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Shri I.J. Kapoor, Technical Member.

In the matter of:

M/s Arpee Electrical Pvt. Ltd
B-5, 1st Floor, Unity Building,
J.C. Road, Bangalore-560 002. ... Applicant

AND

Bangalore Electricity Supply Company Ltd., & Another ... Respondents

Counsel for the Appellant(s) ... Mr. R.P. Gupta

Counsel for the Respondent(s) ...

O R D E R

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON

1. The applicant had earlier filed an application under DFR No.1012 of 2016 and an IA under DFR No.395 of 2014. The said

applications were dismissed on 04/05/2016 by this Tribunal as not maintainable. Following is the relevant portion of the said order.

> *" The Registry has made two orders of this Tribunal available to us. The first order dated 16.5.2007 passed in Appeal No.47 of 2007 in Bangalore Electricity Supply Co. Ltd., V. M/s. Arpee Electricals Pvt. Ltd., & Anr. indicates that Karnataka Electricity Regulatory Commission (**"the State Commission"**) had directed the Appellant Bangalore Supply Co. Ltd., to pay to M/s. Arpee Electricals Private Ltd. represented by Mr. R.P. Gupta the security deposit of Rs.1,20,000/- Rs.45,292/- and Rs.13,000/- after deducting 10 per cent of the deposits along with the interest at the rate of 6 per cent per annum. A statement was made on behalf of the Appellant Bangalore Electricity Supply Co. Ltd., that the Appellant had already made a deposit of Rs.1,78,292/- in the Karnataka High Court. It is stated in the order that Mr. R.P. Gupta, Managing Director, Arpee Electricals Pvt. Ltd., made a statement that he does not press his claim for interest on its deposits till this date except for whatever may have accrued on the deposit lying with the Karnataka High Court. This Tribunal observed that instructions from the Appellant to M/s. Arpee Electricals Private Ltd. did not indicate that the deposit was to bear any interest.*
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> *In view of this, this Tribunal allowed M/s. Arpee Electricals Private Ltd. to withdraw the amount deposited with Karnataka High Court and accept the amount in full and final settlement of its claim in respect of the said deposits. Being aggrieved by this order M/s. Arpee Electricals Private Ltd., preferred a review petition. By order dated 11.10.2007 the review petition being Review Petition No.28 of 2007*

was dismissed by this Tribunal holding that there was no error apparent in the order dated 16.5.2007 passed by this Tribunal. Today it is admitted by Mr. R.P. Gupta, Managing Director of the Applicant that he had filed a Special Leave Petition in the Supreme Court being aggrieved by the order dated 11.10.2007 passed by this Tribunal in review petition. The said Special Leave Petition has been dismissed by the Supreme Court. In view of the fact that the Supreme Court has dismissed the Special Leave Petition and this Tribunal has allowed the Applicant to withdraw the amount deposited with Karnataka High Court in full and final settlement of its claim in respect of the aforementioned deposits, it is not possible for us to reopen the entire issue. These applications are, therefore, not maintainable and dismissed as such."

2. In the present application under DFR No.2209 of 2016 the applicant has made prayers for recall of order dated 04/05/2016 and earlier orders in Appeal No.47 of 2007 and in RP No.28 of 2007 passed by this Tribunal.

3. We have heard Mr. R.P. Gupta, Managing Director of the Applicant in person. He has made similar submissions which he had made earlier before us. He has reiterated that the impugned order dated 08/01/2004 passed by the State Commission and the order dated 16/05/2007 passed by this Tribunal are a nullity. He has further stated that the Supreme Court has simply dismissed civil appeal filed by him without assigning any

reasons and, therefore, it is open to this Tribunal to set aside the orders which are a nullity. He has relied on ***A.R.Antulay v. R.S. Nayak***[1] and other judgments of the Supreme Court and different High Courts. The judgements on which the Appellant has placed reliance are not applicable to the facts and circumstances of the present case. As already noted, vide our order dated 04/05/2016 we have dismissed similar application filed by the Appellant. In our opinion, therefore, this application is not maintainable. Hence, it is dismissed. We hope that the Applicant does not file any more applications of this nature in future in this Tribunal. If the Applicant has any other remedy he is free to prosecute it. On this aspect we have not expressed any opinion.

4. Pronounced in the open court on this **21st day of November,2016.**

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

√**REPORTABLE/~~NON-REPORTABALE~~**

[1] AIR 1988 SC 1531