

COURT-I
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO. 645 OF 2018 in
APPEAL NO. 138 OF 2018

Dated: 5th December, 2018

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

In the matter of:

M/s. Barmer Lignite Mining Company Ltd.

.... Appellant(s)

Vs.

Rajasthan Electricity Regulatory Commission & Ors.

.... Respondent(s)

Counsel for the Appellant(s)

: Mr. Basava Prabhu S. Patil, Sr. Adv.
Mr. Aman Anand
Mr. Aman Dixit
Mr. Pratik Das

Counsel for the Respondent(s)

: Mr. R.K. Mehta
Ms. Himanshi Andley for R-1
Mr. P.N. Bhandari for Discoms

ORDER

1. Application is filed by Barmer Lignite Mining Company Ltd., the Appellant herein, seeking urgent interim relief under Section 111 of the Electricity Act, 2003 pending final adjudication of the Appeal No. 138 of 2018. The Appellant has sought the following reliefs in the instant IA, being IA No. 645 of 2018 in Appeal No. 138 of 2018:

- Pending adjudication of the Appeal, direct recovery of 95% of the difference between the transfer price of lignite calculated, such that the Appellant is in a position to recover the fixed cost component based on admission of 95% of the capital cost and the interim transfer price recovered for FY 2017-18, to atleast partly set off the losses booked by the Appellant in FY 2017-18.

2. The facts of the present Application as presented by the Appellant are as under:

2.1 The state Commission has declined to revise the interim transfer price of lignite for FY 2017-18, despite taking cognizance of commissioning of Jalipa Lignite Mines in November, 2017.

2.2 The Appellant has a debt equity ratio of 99:1 and if it is not granted recovery of fixed cost component of the transfer price of lignite, based on admission of at least 95% of the capital cost as certified by the statutory auditors, the Appellant would not be in a position to even service its debt component and would certainly default on repayment of loans to its lenders. There is no dispute that the capital cost has been incurred; and the State Commission, by a non-speaking order has put the Appellant in a situation where it is clear that the entire financial substratum of the Appellant will be eroded. The Appellant has already booked a loss of Rs. 54 crore in FY 2017-18 and is projecting an estimated loss of approximately Rs. 109 crore in FY 2018-19.

2.3 The commissioning of Jalipa mine which has a capital cost of over four times that of Kapurdi mine and the outflow under each component of the fixed cost of transfer price of lignite, including loan repayment has increased over four times.

2.4 The RBI vide its circular dated 12.02.2018 has scrapped all the past restructuring mechanisms and said that if a borrower delays in payment for even one day, this shall be seen as a delay and resolutions must begin for the stressed assets.

2.5 The learned senior counsel for the Appellant submitted that, the subject matter involved in the instant Interim Application is directly covered by the order dated 08.08.2018 of this Tribunal passed in IA No. 643 of 2018 in Appeal No. 137 of 2018.

The said order is as follows:-

“We have heard Mr. Basava Prabhu Patil, learned senior counsel for the appellant and Mr. P.N. Bhandari, learned counsel for Respondent Nos. 2 to 4.

Learned senior counsel appearing for the appellant states that the State Commission has restricted recovery of the interim transfer price of lignite to 70 % only at which level the Appellant cannot sustain the mining operations. Learned senior counsel further states that the Appellant has a debt equity ratio of 99:1 and if it is not granted recovery of fixed cost component of the transfer price of lignite based on admission of at least 95% of the capital cost as certified by the statutory auditors, the Appellant would not be in a position to even service its debts component and would certainly default on repayment of loans to its lenders. Learned senior counsel also undertakes that the Appellant will refund the excess amount if any resulting out of this grant of interim transfer price of lignite more than 70% as per the impugned order with interest at SBI PLR rate to the Respondents subject to outcome of the appeal.

Mr. Bhandari, learned counsel appearing for Respondent Nos. 2 to 4 strongly objects to the prayer of the appellant and states that it is wrong to say that the State Commission has failed to consider the “sustainability of operations”. As a standard practice, while allowing the ad-hoc interim transfer price every year, the State Commission adopts the self-proclaimed claims of the appellant as the base and allows a transfer price on ad-hoc basis ranging between 60 % to 75%. Therefore, the prayer of the Appellant can not be considered at this stage.

After hearing learned counsel for the parties and keeping in view the financial hardships expressed by learned counsel for the

Appellant and also keeping in view the undertaking given by learned senior counsel for the Appellant, we increase the recovery of the interim transfer price of lignite to 85 % instead of 70%. Order accordingly.

The Application is disposed of.”

- 3.0 **Per contra**, the learned counsel Mr. P.N. Bhandari appearing for the Discoms submitted the following submissions for our consideration:-
- 3.1 The Appellant herein claims the transfer price of lignite based on their expenditure year on year basis and the State Commission, after applying prudence check, approves the same upto the tentative cost. He submitted that while computing the variable charges being admissible to generators (“RWPL”) approved transfer price of lignite is considered which generally works out to above 70% of the transfer cost claimed by the Appellant. The learned counsel contended that in the approved tariff for FY 2014-15 to FY 2016-17, the ratio between the claimed variable charges and that approved by the State Commission falls in the ratio of 65% to 70% and accordingly, there is no justification in increasing the same further.
- 3.2 The learned counsel Mr. P.N. Bhandari appearing for the Discoms strongly objected to the prayer of the Appellant for enhancement of percent recovery of the lignite transfer price beyond 70%. He further submitted that the Appellant is in practice of exaggerating the prices of lignite so as to claim higher realisation in the name of sustainability of operations. He was quick to submit that the details of the major capital expenditure incurred on Jalipa mines appear to be full of flaws as IDC-FC itself has been indicated as Rs. 717.523 crores. He vehemently contended that as a standard practice while allowing the

ad hoc interim transfer price of lignite energy year, the State Commission adopts the self proclaimed claims of the Appellant as the base and allows only to the tune of 60% to 75 % of the same in computation of variable charges. As such, the interference of this Tribunal at this stage is not called for.

4.0 **Our consideration**

4.1 In the light of the submissions made by the learned senior counsel appearing for the Appellant as well as the Respondents and in terms of the order of this Tribunal dated 08.08.2018 passed in IA No. 643 of 2018 in Appeal No. 137 of 2018, we feel just and right to increase the recovery of the interim transfer price of lignite to 85% instead of 70%.

4.2 Needless to mention that above directions are subject to the final outcome of the instant Appeal i.e. Appeal No. 138 of 2018 filed by the Appellant. Order accordingly.

The Application is disposed of.

List the main appeal for hearing on **22.02.2019.**

No order as to costs.

Pronounced in the Open Court on this **5th day of December, 2018.**

(S. D. Dubey)
Technical Member
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(Justice Manjula Chellur)
Chairperson