

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

ORDER IN APPEAL NO. 236 OF 2015
ON THE FILE OF THE APPELLATE TRIBUNAL FOR
ELECTRICITY, NEW DELHI

Dated: 28th May, 2018

Present: **Hon'ble Mr. Justice N.K. Patil, Judicial Member**
Hon'ble Mr. S.D. Dubey, Technical Member

In the matter of:

Tanot Wind Power Ventures Private Limited

Plot No. 1366, Road No. 45, Jubilee Hills,
Hyderabad 500 033
(Represented by its Authorized Signatory,
Mr. Manoj Tanwar)

..... Appellant

VERSUS

1. Rajasthan Electricity Regulatory Commission

Vidyut Viniyamak Bhawan, Sahakar Marg,
Near State Motor Garage,
Jaipur 302 005, Rajasthan
(Represented by its Chairman)

2. Jaipur Vidyut Vitran Nigam Limited

Vidyut Bhawan, Janpath, Jaipur 302 005
(Represented by its Managing Director)

3. Ajmer Vidyut Vitran Nigam Limited

Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer 305004
(Represented by its Managing Director)

4. Jodhpur Vidyut Vitran Nigam Limited

New Power House, Industrial Area,
Jodhpur 342 003
(Represented by its Managing Director)

..... Respondents

Counsel for the Appellant (s) : Ms. Swapna Seshadri
Ms. Neha Garg

Counsel for the Respondent(s) : Mr. R.K. Mehta
Ms. Himanshi Andley for R-1

Mr. Pradeep Misra
Mr. Suraj Singh for R-2 to R-4

The Appellant has sought the following reliefs in Appeal No. 236 of 2015:

- (i) Call for records.
- (ii) Upon perusal of records, be pleased to set aside the Impugned Wind Tariff Order dated 29.05.2015 passed by the Rajasthan Electricity Regulatory Commission, and remand the matter back to the Rajasthan Electricity Regulatory Commission for re-determination of generic wind tariff based on the following three grounds:
 - (a) Adopt higher slab of surcharge rate on MAT and corporate tax, for the purpose of grossing up the return of equity.
 - (b) Consider surcharge on MAT and corporate tax for the entire life of the wind power projects, for the purpose of grossing up the return of equity.
 - (c) Recalculate the discounting rate or weighted average cost of capital by considering post-tax cost of debt based on MAT rate, not corporate tax rate.
- (iii) Grant the cost of this Appeal and pass such other order/s as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

The Appellant has presented this Appeal for considering the following Questions of Law:

- A. Whether the reliance placed by the RERC on the APTEL Order dt. 30th May, 2011 is wrong, as regards the treatment of surcharge for calculation of effective rate of MAT and corporate tax is justified, if it is established that the assumptions taken under the APTEL Order dt. 30th May, 2011 have not proven to be true?
- B. Should the judgment on applicability of Surcharge be based on remote future expectations, as against the ground reality of the present day situation?
- C. The RERC, while determining the generic wind tariff, already acknowledges the fact that the tariff for RE projects availing Accelerated Depreciation benefit and those not availing the benefit needs to be determined separately so as to factually reflect the cost incurred and revenues earned by these two separate sets of wind power projects. When such is the case, whether the same principle of separate categorization should not be applied to “small” wind power projects (let us say, projects below a threshold level of 50MW held under the same legal entity, which would likely be subject to the lower rate of surcharge) and “large” wind power projects (that is, those above 50MW held under the same legal entity)?
- D. Whether it is right to apply rate of corporate tax on cost of debt for the purpose of calculating weighted average cost of capital or discounting rate for levelisation, when it is well known that the debt tenures generally do not last beyond 10-12 years of project life?

ORDER

PER HON'BLE JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. In the instant Appeal, the Appellant herein by questioning the legality, validity and propriety of the impugned Wind Tariff Order dated 29.05.2015 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur, presented this Appeal.

2. We have heard the learned counsel, Ms. Swapna Seshadri, appearing for the Appellant; the learned counsel, Mr. Raj Kumar Mehta, appearing for the first Respondent and; the learned counsel, Mr. Pradeep Misra, appearing for the Respondent Nos. 2 to 4.

3. The learned counsel appearing for the Appellant, at the outset, submitted that, the instant Appeal filed by the Appellant may kindly be disposed of reserving liberty to the Appellant to submit a detailed representation for redressing their grievances before the first Respondent within a period of three weeks from the date of receipt of this Order with direction to the first Respondent to consider the representation to be filed by the Appellant and dispose of the matter on merits in accordance with law after affording reasonable opportunity of hearing to the Appellant and the Respondents. All the contentions of both the parties may kindly be kept open.

4. *Per-contra*, the learned counsel appearing for the Respondents submitted that, the submissions made by the learned counsel appearing for the Appellant may be placed on record and the instant Appeal may be disposed of.

5. Submissions made by the learned counsel appearing for the Appellant, the learned counsel appearing for the first Respondent and the learned counsel appearing for the Respondent Nos. 2 to 4, as stated supra, are placed on record.

6. In the light of the submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondents and having regard to the peculiar facts and circumstances of the case and to meet the ends of justice, the Appellant herein, is permitted to submit its consolidated representation for redressing

their grievances before the first Respondent within a period of three weeks from the date of receipt of this Order.

7. The first Respondent herein, is directed to consider the consolidated representation to be filed by the Appellant and pass an appropriate Order in accordance with law without being influenced by the observations made in the impugned Wind Tariff Order dated 29.05.2015 on the file of the Rajasthan Electricity Regulatory Commission, Jaipur and dispose of the same as expeditiously as possible at any rate within a period of three months from the date of receipt of the consolidated representation submitted by the Appellant.

8. All the contentions of the Appellant and the Respondents are kept open.

9. With these observations, the instant Appeal, being Appeal No. 236 of 2015, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

tpd/vt