

COURT-II

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

**ORDER IN APPEAL NO. 296 OF 2014 &
IA NOS. 460 OF 2014 & 461 OF 2014 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 18th January, 2018

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

In the matter of:

Essar Steel India Ltd.,
Near Flyover,
Scindia Road, Viswakhapatnam 530004,
Represented by its General Manager

..... Appellant(s)

Versus

1. Andhra Pradesh Electricity Regulatory Commission
11-4-660, 4th Singareni Bhavan, Red Hills,
Hyderabad 500004
Represented by its Secretary

2. Union of India
Represented by the Secretary
Ministry of Power, Room No. 204,
Shram Shakti Bhavan,
New Delhi 110001

3. Eastern Power Distribution Company of Andhra Pradesh Ltd.
P: & T Colony, Seethammadhara,
Visakhapatnam 530013
Rep. by its Managing Director

..... Respondents

Counsel for the Appellant (s) : Mr. G. Umopathy
Mr. Aditya Singh

Counsel for the Respondent(s) : Mr. P. Shiva Rao for R-3

The Appellant has sought the following reliefs in Appeal No. 296 of 2014:

- (i) Set aside the impugned order dated 17.01.2012 passed by the APERC in OP Nos. **40 & 48 of 2011** allowing the 3rd Respondent to collect FSA charges which are contrary to the provisions of the Electricity Act, 2003.
- (ii) Pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

The Appellant has presented in this Appeal for consideration under the following Question of Law:

- A. Whether the impugned Clause 45-B as amended of The Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, being Regulation No. 2 of 1999 is not ultra vires the provisions of the Electricity Act 2003, and not unreasonable, irrational and illegal offending the fundamental rights guarantee to the Appellant Company under Article 14 and Article 300-A of the Constitution of India?
- B. Whether the 1st respondent can by Regulations or otherwise, burden the other consumers with FSA costs and consequent charges attributable to agricultural consumption and are not the same to be borne by the State Government in pursuance of its policy of subsidizing the agricultural consumption?
- C. Whether the exclusion of agricultural consumption for the purposes of determination of the FSA is unreasonable, discriminative, irrational and contrary to law

ORDER

We have heard the learned counsel, Mr. Aditya Singh, appearing for the Appellant and the learned counsel, Mr. P. Shiva Rao, appearing for the third Respondent.

2. The learned counsel appearing for the Appellant has filed a Memo dated 18.01.2018 duly signed by Mr. Ganesan Umpathy, the learned counsel for the Appellant. The same is taken on record.

3. Further, the learned counsel appearing for the Appellant submitted that, in the light of the Paragraph 36 clause (a) of the Common Order dated 2.8.2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in C.P.(I.B)39/7/NCLT/AHM/2017 and C.P.(I.B)40/7/NCLT/AHM/2017, which read thus: *“the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority”*, the instant Appeal, being Appeal No. 296 of 2014, filed by the Appellant, may kindly be kept in abeyance.

4. Submission made by the learned counsel appearing for the Appellant, as stated above, is placed on record.

5. In the light of the submission made by the learned counsel appearing for the Appellant, as stated above, and in the light of the Paragraph No. 36(a) of the

Common Order dated 02.08.2017, passed in C.P.(I.B)39/7/NCLT/AHM/2017 and C.P.(I.B)40/7/NCLT/AHM/2017 on the file of the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad, the instant Appeal, being Appeal No. 296 of 2014 along with IA Nos. 460 of 2014 and 461 of 2014, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi, are kept in abeyance.

7. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

pds/vt