

COURT-II

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

**ORDER IN APPEAL NO. 61 OF 2018 &
IA NOS. 1001 & 1002 OF 2017 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 7th May, 2018

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

In the matter of:

Maharashtra State Electricity Distribution Co. Ltd.
5th Floor, Prakashgad, Bandra (East),
Mumbai 400 051

..... Appellant

VERSUS

1. Maharashtra Electricity Regulatory Commission

World Trade Centre No.1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai 400 001
Through its Seceretary

2. Shah Promoters and Develeopers

AST-1, Success Chambers,
1232, Apte Road, Deccan Gymkhana,
Pune

..... Respondents

Counsel for the Appellant (s) : Mr. G. Saikumar
Ms. Rimali Batra
Mr.Abhimanyu Garg

Counsel for the Respondent(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri for R-2

The Appellant has sought the following reliefs in Appeal No. 61 of 2018:

- (i) The Appeal may be allowed and the Impugned Order and judgment dated 16.03.2017 in Case No. 53 of 2016, M/s Shah Promoters and Developers (SPD) v. Maharashtra State Electricity Distribution Co. Limited passed by the Ld Maharashtra Electricity Regulatory Commission be set-aside; and
- (ii) Any other just and equitable relief in favour of the Appellant as deem fit by the Hon'ble Tribunal

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

- A. Whether the Impugned Order is bad in law?
- B. Whether the Impugned Order is a not reasoned order?
- C. Whether MERC has not considered the cash flow difficulties being faced by the Appellant and has passed the Impugned Order without assigning any reasons?
- D. Whether the Impugned Order does not consider the regulatory issues raised by the Appellant?
- E. Whether the Appellant being a regulated entity and not being able to raise additional funds and with external circumstances affecting the cash flow of MSEDCL, the same being within the domain of viz majeure and as such payments under EPA and timely payments to other generators being onerous and impossible, whether such regulatory conditions should have been duly considered by MERC in the Impugned order?

ORDER

1. In the instant Appeal, the Appellant is questioning the legality and validity of the impugned Order dated 16.03.2017 passed by the Maharashtra Electricity Regulatory Commission, Mumbai in Case No. 53 of 2016 in the case of M/s Shah Promoters and Developers (SPD) v Maharashtra State Electricity Distribution Co. Limited.

2. We have heard the learned counsel, Mr. G. Saikumar, appearing for the Appellant and the learned counsel, Ms. Swapna Seshadri, appearing for the second Respondent for quite some time.

3. The first Respondent served unrepresented.

4. The learned counsel for the second Respondent, at the outset, submitted that, the subject matter involved in the instant Appeal is directly covered by the judgment of this Appellate Tribunal dated 24.04.2018 passed in Appeal No. 75 of 2017 in the case of Maharashtra State Electricity Distribution Co. Ltd v Maharashtra Electricity Regulatory Commission & Anr. on the file of the Appellate Tribunal for Electricity, New Delhi. Therefore, she submitted that, in terms of the said judgment and the reasons stated therein, the instant Appeal, being Appeal No. 61 of 2018 filed by the Appellant on the file of the Appellate

Tribunal for Electricity, New Delhi may kindly be disposed of in the interest of justice and equity.

5. *Per contra*, the learned counsel, Mr. G. Saikumar, appearing for the Appellant, at the outset, fairly submitted that, in the light of the judgment of this Appellate Tribunal dated 24.04.2018 passed in Appeal No. 75 of 2017 in the case of Maharashtra State Electricity Distribution Co. Ltd v Maharashtra Electricity Regulatory Commission & Anr. on the file of the Appellate Tribunal for Electricity, New Delhi, the instant Appeal kindly may be disposed of in terms and the reasons stated therein in the interest of justice and equity.

6. The submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the second Respondent, as stated above, are placed on record.

7. In the light of the submissions made by the learned counsel appearing for the second Respondent as well as the Appellant, as stated supra, the instant Appeal, being Appeal No. 61 of 2018, filed by the Appellant on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of in terms of the judgment of this Appellate Tribunal dated 24.04.2018 passed in Appeal No. 75 of 2017 in the case of Maharashtra State Electricity Distribution Co. Ltd. v

Maharashtra Electricity Regulatory Commission & Anr. and the reasons stated therein.

IA NOS. 1001 & 1002 of 2017

7. In view of the Appeal No. 61 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, on account of which, the reliefs sought in IA Nos. 1001 & 1002 of 2017 do not survive for consideration and, hence, stand disposed of.

8. Order accordingly.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

js/vt