

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

APPEAL No. 31 of 2015

Dated: 10th April, 2015

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member**

In the matter of :

- 1. Amplus Infrastructure Developers Pvt. Ltd. ...Appellant (s)
81/1 Adhchini, Aurobindo Marg
New Delhi – 110 091**
- 2. Avant Garde Power Solutions Pvt. Ltd.
C-2/39, Chitrakoot Nagar,
Jaipur – 302 021**

Versus

- 1. Uttarakhand Electricity Regulatory Commission. ...Respondent (s)
“Vidyut Niyamak Bhawan”,
Near I.S.B.T., P.O. Majra
Dehradun, Uttarakhand – 248 171**
- 2. Uttarakhand Renewable Energy Development Agency (UREDA)
Energy Park Campus
Industrial Area, Patel Nagar
Dehradun – 248 001
Uttarakhand**
- 3. Uttarakhand Power Corporation Ltd.,
Corporate Head Quarter – Victoria Cross
Vijeyta Gabar Singh Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248001, Uttarakhand**

**Counsel for the Appellant(s) : Mr. Ankur Sood
Mr. Shoumendu Mukherji**

**Counsel for the Respondent(s): Mr. Buddy A. Ranganadhan,
Mr. D.V. Raghuvanshy and
Mr. Sanjay Singh for R-1.**

**Mr. Pradeep Mishra,
Mr. Manoj Kumar sharma,
Mr. Suraj Singh and
Mr. Shashank Pandit for R-2 & R-3**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The present Appeal has been filed by Amplus Infrastructure Developers Pvt. Ltd. and Another challenging the impugned order dated 07.11.2014 passed by Uttarakhand Electricity Regulatory Commission (“State Commission”) holding that Third Party Model for roof-top and Small Solar PV Power Plants in Uttarakhand is outside the ambit of the Renewable Energy Regulations and the tariffs for such projects would be separately determined by the State Commission.

2. The Appellants are private limited companies who are in the business of development of distributed solar plants across India. The State Commission is the 1st Respondent. UREDA, the Renewable Development Agency of the State Government is the 2nd Respondent. Uttarakhand Power Corporation Ltd., the Distribution Licensee, is the 3rd Respondent.
3. The brief facts of the case are as under:-
 - a) On 15.04.2013, the State Commission issued the Renewable Energy Regulation, 2013 (“RE Regulations”) with the aim and

purpose of promotion of generation of power from renewable energy sources, including solar.

- b) In order to promote solar generation, the State Government and the Ministry of New and Renewable Energy (“MNRE”), Government of India approved a scheme for individuals, residential, commercial/government building owners and industrial units to set up Solar Power Plant within the prescribed limit of 500 kW at one site.
- c) Pursuant to the above Scheme, the Respondent no.2 invited applications to install Solar Power Plant under the scheme. The Appellants applied under the Scheme.
- d) On 16.06.2014, the Respondent no.2 issued a letter to the Appellant that it has registered the Appellant’s proposed project under the Scheme on first come first serve basis.
- e) On 26.06.2014, the MNRE, Government of India issued the Guidelines on Grid Connected Roof-top and Small Solar Power Plants Programme.
- f) On 18.07.2014, the Respondent no.2 filed a petition before the State Commission seeking clarification on various issues for implementation of “Uttarakhand Grid Interactive Roof-top and Small SPV Power Plants Scheme” under the RE Regulations, 2013.

- g) The State Commission after hearing the Respondent no. 2 passed the impugned order dated 07.11.2014.
 - h) The State Commission in the impugned order has decided that a) Third Party Model for development of Solar Power Plants is outside the ambit of RE Regulations, 2013, b) RE Regulations, 2013 specifies tariffs and other conditions for consumer of Distribution Licensee in the State who installs a solar roof-top plant c) Implementation of roof-top project under the State Government Scheme by person other than the owner of the premises/consumer shall not be able to avail preferential tariff in accordance with RE, Regulations, 2013. However, the tariffs at which electricity is procured by the Distribution Licensee would be regulated by the Commission and will have to be got determined by the Commission.
 - i) Aggrieved by the above findings, the Appellants have filed this Appeal.
4. The main issue raised in this Appeal is the applicability of RE Regulations, 2013 to grid connected roof-top and Small Solar Power Plants established under the Third Party Model.
5. The Appellants have made the following submissions:
- a) Across the nation and even internationally, grid connected small Solar Power Plants are established under two broad

frameworks viz. Ownership Model wherein the solar roof-top power plant is established by the person who owns the premises/roof-top and Third Party Model wherein the Solar Roof-top Power Plant is established by Third Party that leases the premises roof-top and not by the owner.

- b) From operation stand-point there is no distinction whatsoever between the two models.
 - c) Solar energy and grid interactive roof-top and Small Solar Power PV Plants are recognized under the RE Regulations, 2013 as an important avenue for promotion of renewable sources of energy. The Regulations do not make any distinction between the Ownership Model and the Third Party Model and do not even refer to either.
 - d) Based on provisions of Regulations 2(1), 3(gg), 4, 10 read with 37, the generic tariff of Rs. 9.20 per kWh would be squarely applicable to Appellants' plants to be developed in Third Party Model..
6. Shri Ankur Sood, Learned Counsel for the Appellants has argued that while the provisions of the Regulations are amply clear, even in case of a doubt the provisions would have to be interpreted in view of the object and purpose i.e. to promote generation of electricity from renewable sources by providing incentive for the same. The

- Regulation is in the nature of a beneficial legislation as it seeks to provide benefits to incentivise solar power plants and should receive the widest possible meaning so as to advance this object. The Third Party Model is an important component in the growth of solar power generation and any interpretation of the RE Regulations that excludes the Third Party Model falls foul of its object and purpose. He referred to APTEL's judgment dated 28.11.2014 in Appeal no. 156 of 2013 and 248 of 2013, Baldev Sahai Bangia U.R.C. Bhasin, (1982) 2 SCC 210 and S. Appu Kuttan v. Thundiyile Janaki Amma, (1988) 2 SCC 372 in support of his arguments.
7. Shri Ankur Sood further argued that the State Commission has a legal duty and obligation to ensure parity of treatment between similarly placed generators. Any differential treatment would have to satisfy the twin tests of Article 14 i.e. reasonable classification and rational nexus with the object of RE Regulations, 2013. As there is no operational distinction between the Third Party Model and the Ownership Model, hence the classification sought to be made in the impugned order is completely unreasonable. The impugned order fails on the envil of Article 14 as solar plants operating under the two models are equals but are being treated unequally. He referred to Chemicals and Plastics India Ltd. V. UOI, 1995 (78) ELT 410 (Mad), DCM Ltd. Vs. Asstt. Engineer, AIR 1998 Raj 64 , Reliance Energy

Ltd. V Maharashtra State Road Development Corpn. Ltd., (2007) 8 SCC 1. Any interpretation that renders the legislation or regulation ultra vires should be avoided, if any other interpretation is possible.

8. The State Commission in its counter affidavit has submitted as under:

- a) The impugned order was passed in a petition filed by the Respondent no.2 seeking clarifications and orders on the various issues for implementation of Grid Interactive Roof-top and Small SPV Scheme and the Appellants were not party to the proceeding.
- b) Regulations 35 makes it amply clear that the Scheme for Roof-top solar PV source was envisaged only for consumers who were drawing power from the licensee's system and the word "person" as mentioned in Sub Regulation (2) needs to be construed accordingly. This is apparent from conjoint reading of Sub Regulation (2) and (3).
- c) Request made to include Third Party Model under the RE Regulations, 2013 require amendment of the Regulations. By alleging that the impugned order had an impact on the Appellants, the Appellant is trying to challenge the Regulations before this Tribunal which is not maintainable.

- d) The Appellants may approach the Commission for approval of tariff in accordance with the Regulations after they are allotted projects.
 - e) The Regulations require the Distribution Licensee to choose the generators through competitive bidding route with prescribed generic tariff being the ceiling except for small installation by consumer at their roof-top. The instant Appeal is motivated and is an attempt to wriggle out from the competitive bidding route and obtain much higher generic tariff prescribed for small roof-top solar installation.
 - f) The impugned order was strictly on the basis of the Contract Act and RE Regulations, 2013. The Regulations did not cover the Third Party Model as no request for inclusion of the Third Party Model was received when the draft Regulations were issued for comments. Hence, now the contention of the Appellant regarding the discrimination between parties operating solar power plants under the two models is unfounded and totally out of place.
9. The questions that arises for our consideration are:
- (i) **Whether the grid interactive roof-top Solar PV projects of the Appellants developed under Third Party Model would be covered under the RE Regulations, 2013?**

- (ii) **Whether the generic tariff for grid interactive roof-top and small solar PV projects as specified in the RE Regulations, 2013 would be applicable to the Appellants' roof-top and small PV project developed under Third Party Model?**

Both the above issues are interconnected and are being dealt with together.

10. **Let us first examine the Scheme for Grid Interacted Rooftop and Small SPV Power Plant of the State Government (“The Scheme”).**
11. **The Scheme** has been initiated with the objective to utilize the space on roof-tops and waste lands around buildings to develop roof-top and small solar PV power plants. The small quantity of power generated by individual household, industrial building, commercial or any other type of building can be used partly to fulfill the requirement of the occupants of the building and surplus, if any, can be fed into the grid. The Ministry of New and Renewable Energy (“MNRE”), Government of India has been implementing a programme on “Off grid Decentralized Solar Applications” for the first phase of the Jawahar Lal Nehru National Solar Mission. The recent ongoing scheme under this programme has been to connect the small solar PV plants with grid to export excess power. MNRE may

provide a subsidy upto 30% of the benchmark cost of the project for plants upto 100 kW for solar plants with battery back up and upto 500 kW without battery back up. The grid interactive roof-top system works on net metering basis wherein the beneficiary pays to the utility on net metering basis only. Alternatively two meters can be installed to measure export and import of power separately. The feed in tariff for the power generated by the Solar Power Plant will be decided by the State Commission. The Solar facility can either be owned, operated and maintained by the consumer or the facility is owned by consumer but operated and maintained by the third party. The solar installation can also be owned, operated and maintained by third party to provide services to the consumer and the surplus electricity may be injected into the electricity grid. The third party implementing the solar facility shall enter into a lease agreement with the consumers for medium to long term basis on rent in the Solar Lease Model. The Scheme envisages that Power Purchase Agreement (“Power Purchase Agreement”) should be signed between the owners of building, 3rd party and the Distribution Licensee as applicable. An agreement between the Distribution Licensee and the owner of building/premises/SPV plant needs to be signed for metering arrangement. Suitable payment mechanism may also be provided by the Distribution Licensee/State Nodal Agency.

12. The MNRE has also issued guidelines for implementation of the Grid connected Roof-top and Small solar Power Plants Programme by letter dated 26.06.2014 under Jawaharlal Nehru National Solar Mission. This Scheme is applicable to Solar photovoltaic (“PV”) plants upto a maximum of 500 kW capacity. MNRE would also provide financial support and the present subsidy is 30% of the benchmark cost of the power plant. Both Ownership Model and Third Party Model are envisaged under the Scheme. The Scheme also envisages MOU/Agreement to be entered into among the beneficiaries/Distribution Licensee and other involved parties.
13. **Let us now examine the RE Regulations, 2013.**
14. Regulation 2 provides the Scope and extent of application of the Regulations. Regulation 2(1) provides that the Regulations apply in all cases where Renewable Energy Sources and Non-fossil Fuel Based co-generation Station commissioned after coming in effect of these Regulations supply power to the Distribution Licensees or local rural grids within the State. Grid interactive roof-top and Small Solar PV Plants are specifically included in the Regulation 2(1) subject to the fulfillment of eligibility criteria specific in the Regulation 4.
15. Regulation 2(3) provides that the generic tariff specified for Solar PV Power Projects under the Regulations shall be the maximum tariff

- and the Distribution Licensee shall invite bids from the generators/developers for procurement of power from these generators/developers. The Distribution Licensees shall enter into Power Purchase Agreement with the generators/developers bidding lower tariff.
16. Regulation 3(gg) defines the Renewable Energy Sources. Solar is included in the definition.
 17. Regulation 4 lays down the eligibility criteria. Grid interactive roof-top and small PV Power Projects based on technologies approved by MNRE fulfill the eligibility criteria.
 18. Regulation 10 specifies that RE based generating stations may opt for the generic tariff, as determined based on norms specified in these Regulations for different technologies or may file a petition before the State Commission for determination of "Project Specific Tariff".
 19. Regulation 33 provides that the norms for Solar Photovoltaic (PV) power under these Regulations shall be applicable to grid connected PV systems that directly convert solar energy into electricity and are based on the technologies such as crystalline silicon or thin film etc., as may be approved by MNRE.
 20. Regulation 35 reads as under:
"35. Grid interactive roof top and small solar PV plants

(1) *The technology specific parameters for determination of generic tariff for Grid interactive roof top and small solar PV plants shall be as below:*

Projects Commissioned on or after 01.04.2013

<i>Capital Cost</i>	<i>O&M Expenses for year of commissioning</i>	<i>Capacity Utilization Factor</i>
<i>(Rs. Lakh/MW)</i>	<i>(Rs. Lakh/MW)</i>	
1025	11.63	19 %

(2) *Roof-top Solar PV sources can be installed for injecting into the distribution system of a licensee by any person.*

(3) *Such injection from roof-top solar PV sources of the above mentioned consumer(s) shall be settled on net energy basis at the end of each billing period.*

(4) *The tariff, as per tariff orders of the Commission, in respect of the supply of electricity to the consumers by the distribution licensee shall be applicable for the net energy supplied by the licensee in a billing period if the supplied energy by the licensee is more than the injected energy by the roof-top solar PV sources of the consumer(s).*

(5) *If in a billing period the supplied energy by the licensee is less than the energy injected by the roof-top solar PV sources of the consumer(s), the licensee would be billed at the generic tariff specified in these Regulations for excess energy supplied by the consumer”.*

21. According to Regulation 35, the Roof-top Solar PV plant can be installed for injecting into the distribution system by any person. However, the injection of power from roof-top solar PV sources of the above mentioned consumer(s) shall be settled on net energy

- basis at the end of each billing period. If the energy supplied by the licensee in a billing period is more than the injected energy by the roof-top solar PV source of the consumer then the utility shall charge the consumer for the net energy supplied to the consumer at the tariff as per the tariff orders of the Commission. If in the billing period the energy supplied by the licensee is less than the energy injected by the roof-top Solar PV sources of the consumer, the licensee would be billed at the specified generic tariff for the excess energy supplied by the consumer.
22. It is important to note that as per the Regulation 35(2), the roof-top solar PV source can be installed by any person but the energy billing and settlement has been provided for between the distribution licensee and the consumer.
23. Regulation 42 provides that the supply of electricity to the consumer(s) from the licensee and to the licensee's distribution system for the roof-top solar PV sources shall be measured either by two separate meters, the reading of which shall be used for each billing period for settlement on net basis or alternatively by an export-import type meter suitable for directly measuring the net exchange.
24. Annexure I to the Regulation provides for the generic tariff of Grid Interactive Roof-top and Solar PV Plants commissioned on or after

01.04.2013 in terms of Rs/kWh (levellised) for the entire life of the project.

25. Let us examine the findings of the State Commission in the impugned order.

26. The State Commission held that the RE Regulations, do not cover third party model and as such the third party model is outside the ambit of RE Regulations, 2013. The Regulations specify the tariffs and other conditions for a consumer of the distribution licensee in the State who installs a solar roof-top plant. Accordingly, in case of implementation of solar roof-top project under the aforesaid scheme by a person/party other than the owner of the premises/consumer, such person/party shall not be eligible for availing preferential tariff in accordance with RE Regulations, 2013. The tariff at which the Distribution Licensee procures the electricity will be got determined by the Commission. The State Commission also agreed to retain the generic tariff as specified in the Regulation effective till 31.03.2015 (as against 31.03.2014 specified in the Regulations). However, for third party model not covered in the RE Regulations, 2015, the tariffs will have to be determined by the Commission. The Commission further observed that the selection of the model proposed by the Respondent no.2 is based on competitive bidding of capital cost/tariff. However, the tariff for supply of power to the Distribution

- Licensee in the third party model will be the tariff as approved by the Commission in accordance with the norms and principles specified under the RE Regulations, 2013.
27. Section 61 of the Electricity Act provides that the State Commission has to specify the terms and conditions for determination of tariff and in doing so is to be guided by *interalia* promotion of co-generation and generation of electricity from renewable sources of energy. Section 86(1) provides that the State Commission has to promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity to the grid and sale of electricity to any person, and also specify for purchase of electricity for such sources, a percentage of total consumption of electricity in the area of Distribution Licensee.
 28. National Electricity Policy and Tariff Policy provided for promotion of renewable sources of energy. Tariff Policy was amended on 20.01.2011 to provide for minimum percentage of purchase of solar energy to be specified by the State Commission under Section 86(1)(e) of the Electricity Act, 2003.
 29. This Tribunal in judgment dated 28.11.2014 in Appeal no. 156 of 2013 and batch, Simran Wind Project Pvt. Ltd. Vs. CERC held that the Regulations have to be interpreted and applied in the light of the object to promote the renewable generators and not in a restrictive

manner to deprive the generators any benefit that may be available to them. In other words, any beneficial legislation needs to be interpreted and applied keeping in mind the object to be achieved and not to nullify the basic intent of the legislation.

30. Hon'ble Supreme Court in (2008) 9 SCC 527, Union of India Vs. Prabhakaran Vijay Kumar and Ors. held as under:

“Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred vide Kunal Singh v. Union of India (SCC para 9), B.D. Shetty v. Ceat Ltd. (SCC para 12) and Transport Corpn. of India v. ESI Corpn.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation.....”

31. In light of the National Electricity policy and provisions of the Act, Tariff Policy, mandating for promotion of renewable energy particularly solar energy and the above rulings of the Supreme Court and this Tribunal, let us examine if the Third Party Model is covered under the RE Regulations, 2013.
32. The various operations for installation of roof-top and small solar power projects under the State's Scheme as under:

- “(a) Solar installations owned by consumer*
- i) Solar Rooftop facility owned, operated and maintained by the consumer(s).*
 - ii) Solar Rooftop facility owned by consumer but operated and maintained by the 3rd party.*
- (b) Solar installations owned, operated and maintained by 3rd Party.*

The 3rd party implements the solar facility and provides services to the consumers. The surplus electricity may be injected to the electricity grid. The combinations could be:

- i) Arrangement as a captive generating plant for the roof owners The 3rd party implements the facility at the roof or within the premise of the consumers; the consumer may or may not invest as equity in the facility as mutually agreed between them. The 3rd party may also make arrangement of undertaking operation and of maintenance of the facility. The power is then sold to the roof owner.*
- ii) Solar Lease Model, Sale to Grid The 3rd party implementing the solar facility shall enter into a lease agreement with the consumer for medium to long term basis on rent. The facility is entirely owned by the 3rd party and consumer is not required to make any investment in facility. The power generated is fed into the grid and the roof top owner gets a rent.*

(c) Solar Installations Owned by the Utility Ownership of “

33. As far as option (a) is concerned, such arrangements will be covered under the RE Regulations, 2013. Under arrangement b(i) no energy is sold to the utility. We are concerned here with model b(ii), where 3rd party implements the solar facility under a lease agreement with the consumer and power generated is fed into the grid (Third Party

Model). If part of power generated by the solar plant is supplied to meet the load of the consumer free of cost it would not amount to sale of electricity by the 3rd party developer to the consumer. If the metering and billing settlement takes place between the consumer and the distribution licensee irrespective of whether the solar plant is owned by the consumer or the Third Party, it will be covered under the Regulations 35. Regulation 35(2) provides that installation of Roof-top Solar PV can be installed by any person. However, metering, billing and settlement for net energy has to be between the Distribution Licensee and the consumer. Therefore, as long as the Appellants do not sell power to the consumer and do not have any direct commercial relationship for metering and billing with the Distribution Licensee and have a direct arrangement with the consumer for reimbursement of charges for net injection of solar energy received by the consumer from the Distribution Licensee, the same would be permissible under the existing Regulations. In that case the generic tariff as specified by the Commission for roof-top and small Solar PV plants under the RE Regulations will be applicable for sale of surplus solar energy to the Distribution Licensee. However, if the Appellants want a direct commercial relationship with the Distribution Licensee for sale of net solar energy injected into the grid, a tripartite agreement will have to be

- entered into between the Appellants, the consumer at whose premises the solar plant is installed and the Distribution Licensees for which the State Commission will have to appropriately amend the Regulations to include the enabling metering, billing and settlement arrangement.
34. We do not agree that the feed in tariff for the roof-top solar plant for plants developed under Ownership Model and Third Party Model will be different. There is no difference from the operational stand-point, capital cost, O&M expenses and capacity utilization in the two models. For the owner of the project the space in which solar plant is installed has opportunity cost in return of which it gets lease rent from the 3rd party developer. Regulation 35(2) also recognizes installation of roof-top solar facility by any person.
35. Learned Counsel for the State Commission has argued that under Regulation 2(3) the generic tariff for Solar PV and Solar Thermal Power Projects shall be the maximum tariff and the Distribution Licensee shall invite bids from the generators/developers for procurement of power from these generators/developers. The Distribution Licensee has to enter into a Power Purchase Agreement with generators/developers bidding lower tariff.
36. We do not agree with the above contention of the Learned Counsel for the State Commission in respect of roof-top and small Solar PV

plants. There are three categories of Solar Power Plants under the Regulations viz. solar PV, Solar Thermal Power Projects and grid interactive roof-top and small Solar PV Plants. Different tariff parameters and tariffs have been specified for these three categories. The generic tariff for Grid Interactive Roof-top and Small solar PV Plants is lowest amongst all the three types. The provision for competitive bidding applies to Solar PV and Solar Thermal Categories and not Grid Interactive Roof-top and Small Solar PV Plants. This is clear from the Regulation 2(3) which specifies the bidding provision for only solar PV and Solar Thermal Projects and not grid interactive roof-top and small solar PV plants. Such Roof-top and Small Solar PV Plants can sell the net injection into the Distribution Licensees at the generic tariff specified under the RE Regulations, 2013. If competitive bidding is resorted to for roof-top solar projects it would put them in a disadvantageous position as part of the output of roof-top solar plant is consumed for captive use and only net energy after accounting for import of energy by the consumer is considered as sale to the Distribution Licensee. On the other hand the entire energy sent out of other Solar PV and Solar Thermal Projects is considered as sale to the Distribution Licensee.

37. The RE Regulations, 2013 do not bar development of grid interactive roof-top and Small Solar PV Plants in Third Party Model. However,

the metering, billing and settlement of energy fed into the Distribution Licensee's system has been provided between the consumer and the Distribution Licensees. The tariff as specified in the Regulations for Grid Interactive roof-top and Small Solar PV Plants shall be applicable to both Ownership Model and Third Party Model. As long as the commercial relationship for metering, billing and settlement of dues remains between the consumer and the Distribution Licensee, the roof-top and small Solar PV Projects can be developed in Third Party Model under the existing Regulations. In order to facilitate development of Grid Interactive roof-top Solar PV Plants in Third Party Model with direct commercial relationship between the developer and the Distribution Licensee, we direct the State Commission to frame necessary procedure by amending the Regulations within 3 months after issuance of this judgment in order to promote such solar plants.

38. The Appellants have made a prayer to extend the validity of the generic tariff for 3 months beyond 31.03.2015 to enable them to install their roof-top Solar PV Plants as they could not install their plant earlier due to adverse findings of the State Commission in the impugned order.

39. We find that the Regulation of RE Regulations, 2013 provides for control period of five years from FY 2013-14 but the benchmark of capital cost for all types of Solar Plants may be revised annually by the Commission. Therefore, the tariff for Grid Interactive roof-top and small Solar PV Plants as specified in the Regulations was effective upto 31.03.2014. However, the State Commission by the impugned order has already extended the same tariff upto 31.03.2015. We cannot give any direction for further extension to the State Commission as the extension cannot be given case by case and has to be a generic extension. The Appellants may, however, approach the State Commission for extension of tariff.
40. We find that FY 2014-15 is already over and generic tariff for FY 2015-16 has to be in place from 01.04.2015. The State Commission is directed to take immediate action in the matter as there should not be any gap in date of validity of the previous years' tariff and the effective date of the tariff for the current year
41. **To sum up.**
- (a) **The tariff as specified in the RE Regulations for grid interactive roof-top and small solar PV plants shall be applicable to such projects developed under both Ownership Model and Third Party Model as there is no difference in projects developed under the two models**

from the operational stand-point, capital cost, O&M expenses and capacity utilisation. As long as the commercial relationship for metering, billing and settlement of dues remains between the consumer in whose premises the roof-top/small solar PV plant has been installed and the Distribution Licensee, such projects can be developed in Third Party Model under the existing Regulations. However, if the third Party developing the solar PV project wants a direct commercial relationship with the Distribution Licensee, a Tripartite Agreement between the Consumer, the Third Party Developer and Distribution Licensee will have to be entered into. The existing Regulations do not have any provisions for such arrangements. Therefore, we direct the State Commission to frame necessary procedure by suitably amending the Regulations within three months after issuance of this judgment in order to promote such solar plants.

- (b) The condition for procurement of solar energy by Distribution Licensee through competitive bidding would not be required for the roof-top and small solar PV plants category under the existing Regulations.
- (c) The State Commission shall notify a generic tariff for FY 2015-16 at the earliest if not already done.

42. In view of above, the Appeal is allowed in part. The State Commission shall pass consequential order as per the directions given in this judgment. No order as to costs.
43. Pronounced in the open court on this 10th day of April, 2015.

(Rakesh Nath)
Technical Member

(Justice Mrs. Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE

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