

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

**E.P. No. 1 of 2014 in
Appeal No. 185 of 2011**

Dated: 12th March, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of :

Adani Power Limited Petitioner/Appellant
9th Floor, Shikhar, Mithakali Six Road
Navarangpura, Ahmedabad – 380 009

Versus

Gujarat Urja Vikas Nigam Limited Respondent
Sardar Patel Bhawan, Race Course Circle
Vadodra – 39007, Gujarat

Counsel for the Appellant (s): Mr. Amit Kapur
Ms. Poonam Verma
Mr. Gaurav Dudeja
Mr. M. Deliwala
Mr. Malav Deliwala

Counsel for the Respondent (s): Mr. M G Ramachandran
Mr. Anand K Ganesan,
Ms. Swapna Seshadri
Ms. Swagatika Sahoo
Ms. Anushree Bardhan
Mr. A K Dueby
Mr. P.J. Jari
Mr. Y.T. Patel

ORDER

Rakesh Nath, Technical Member

This Execution Petition has been filed by Adani Power Limited under Section 120(3) of the Electricity Act, 2003 read with Part II and order XXI of Code of Civil Procedure 1908 seeking execution of the judgment and decree dated 04.10.2012 passed by this Tribunal in Appeal no. 185 of 2011.

2. Adani Power Limited had filed a Petition before the State Commission seeking declaration and direction that they were under no obligation to supply contracted capacity from their power project to the Respondent prior to the Schedule Commercial Operation Date (“SCOD”) and that Adani Power was free to sell power outside the Power Purchase Agreement (“PPA”) to any third party prior to the SCOD. The State Commission allowed the Petition and decided that Adani Power was under no obligation to supply the contracted capacity to the Respondent prior to SCOD which is 02.02.2012. The Respondent GUVNL filed an Appeal before this Tribunal and the Tribunal by judgment dated 04.10.2012 upheld the decision of the State Commission.
3. According to Adani Power, during the pendency of the Petition before the State Commission, Adani Power and the Respondent reached an

understanding that in the intervening period Adani Power may sell power in open market to third party and pay to the Respondent excess realization from such third party sale above the tariff receivable under the PPA. In case the dispute is decided in favour of Adani Power the excess realization paid to the Respondent along with interest will be paid back by the Respondent to Adani Power.

4. In the present Execution Petition, Adani Power is seeking direction for a refund of Rs. 371.50 crores along with interest as per their computation according to the above understanding.
5. We have heard Shri Amit Kapur, Learned Counsel for the Petitioner and Shri M.G. Ramachandran, Learned Counsel for the Respondent.
6. We find that neither in the State Commission's order impugned before this Tribunal nor in the judgment of this Tribunal dated 04.10.2012, no decision on the monetary claim of Adani Power was made. The monetary claim of Adani Power is disputed both on the admissibility of the claim as well as on the quantum claimed by the Respondent. We are not in a position to pass any order in this execution petition as no finding has been made by this Tribunal regarding monetary claim of Adani Power in the judgment dated 04.10.2012.

7. In view of above, we dismiss the Execution Petition. However, Adani Power is at liberty to seek remedy at the Appropriate Forum.
8. Pronounced in the open court on this **12th day of March, 2015.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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