

COURT-I

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A.No.2 of 2015
in
Appeal No. 2 of 2015

Dated : 29th January, 2015

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

In the matter of :

Gujarat Urja Vikas Nigam Ltd.

... Appellant(s)

Versus

Gujarat Electricity Regulatory Commission & Anr.

... Respondent(s)

Counsel for the Appellant (s) :

Mr. M.G.Ramachanran
Mr. Anand K. Ganesan
Ms. Anushree Bardhan

Counsel for the Respondent(s) :

Mr. Gopal Jain, Sr. Adv.
Mr. Alok Shankar
Ms. Neeha Nagpal
Mr. Vikarant Pachnanda

ORDER

PER JUSTICE RANJANA P. DESAI, CHAIRPERSON

Being aggrieved by order dated 22.10.2014 passed by the Gujarat Electricity Regulatory Commission, 1st Respondent herein, the appellant has filed this Appeal. The operative portion of the said Order reads as under:

“Considering the above facts, we decide that the present petition succeeds. We decide that the petitioner is entitled to receive the (i)

Depreciation as per the particulars of claim set out in the petition as decided by the Commission (ii) Foreign Exchange Variation as per the particulars of claim decided by the Commission (iii) Interest on UTI Non-Convertible Debentures as per the particulars of claim set out in Discounting Charges as decided by the Commission (iv) Wrongful deduction of Rebate by GUVNL as per the particulars of claim as decided by the Commission (v) Interest on working capital as per the particulars of claims as decided by the Commission. The petitioner is also entitled to receive the interest on working capital on maintenance spares on actual but not exceeding one year requirement after 5 years. The deduction of 1/5th of initial spares made by the respondent is illegal after 5 years. We also decide that the claim of the petitioner prior to 25.09.2007 is not permissible in cases of interest on working capital for fuel as well as spares. While in the case of incentive on deemed generation the petitioner is entitled for his claim as decided in earlier paragraphs. We also decide that the petitioner is entitled to receive the Delayed Payment Charges on the dues as decided in the earlier paras. The claim of the petitioner on escalation of O & M expenses is not pursued by the petitioner and hence considered as withdrawn. Parties to the petition shall evaluate the amount receivable by the petitioner from the respondent as per the principle decided by the Commission in the above paras and inform the Commission within one month's time from the receipt of the Order."

The Appellant has filed the instant Application praying that the impugned order be stayed. The 2nd respondent, who is the contesting party has filed a reply to which a rejoinder has also been filed by the appellant.

It is the case of the 2nd respondent that if as per the impugned Order amount receivable by the 2nd respondent from the appellant is evaluated, it comes to Rs.6,80,65,48,845/- as on 10.12.2014.

This claim is denied by the appellant in its rejoinder. In paragraph 4 of the rejoinder, the appellant has given its calculations as per the impugned order. According to the appellant, the amount due as per the impugned Order would be Rs. 185.65 crores only. The chart given in said paragraph reads as under:

“Calculation of various elements as per the impugned order as on 10.12.2014.

(in Crs.)

<i>Elements</i>	<i>Claim of EPoL</i>	<i>Principal Amount computed under the impugned order</i>
<i>Depreciation</i>	<i>98.17</i>	<i>39.40</i>
<i>Rebate</i>	<i>79.92</i>	<i>-</i>
<i>Bill Discounting</i>	<i>0.55</i>	<i>0.55</i>
<i>FERV</i>	<i>39.17</i>	<i>39.17</i>
<i>UTI – NCD</i>	<i>5.40</i>	<i>5.40</i>
<i>IWC</i>	<i>9.23</i>	<i>8.13</i>
<i>IWC on Depreciation</i>	<i>1.33</i>	<i>-</i>
<i>Sub Total Rs.</i>	<i>233.77</i>	<i>92.66</i>
<i>DPC Rs.</i>	<i>446.89</i>	<i>92.99</i>
<i>Total Amount Recoverable Rs.</i>	<i>680.65</i>	<i>185.65”</i>

It is the case of the appellant that the 2nd respondent is not entitled to claim any amount for the period prior to 3 years from the date of the petition, namely, prior to 29.01.2007. On this basis, in paragraph 10 of the rejoinder, the appellant has given its calculations. It is stated that if the claim as per the impugned Order is computed only for the period from 29.01.2007, the amount due would work out to Rs. 26.28 Crores without delayed payment surcharge and the delayed payment surcharge would work out to Rs. 16.60 Crores aggregating to Rs. 42.88 Crores as on 10.12.2014. The relevant chart quoted in paragraph 10 of the rejoinder is as follows:

(In Crs.)

<i>Year</i>	<i>Claim of EPoL</i>	<i>Principal Amount of various issues in petition 1002</i>
<i>Depreciation</i>	<i>98.17</i>	<i>26.28</i>
<i>Rebate</i>	<i>79.92</i>	-
<i>Bill Discounting</i>	<i>0.55</i>	-
<i>FERV</i>	<i>39.17</i>	-
<i>UTI – NCD</i>	<i>5.40</i>	-
<i>IWC</i>	<i>9.23</i>	-
<i>IWC on Depreciation</i>	<i>1.33</i>	-
<i>Sub Total Rs.</i>	<i>233.77</i>	<i>26.28</i>

DPC Rs.	446.89	16.60
Total Amount Recoverable Rs.	680.65	42.88

It is the case of the Appellant that the point regarding Foreign Rate Exchange Variation was not raised in the original Arbitration Proceedings. However, it *prima facie*, appears that it was in fact raised in the Arbitration Proceedings. If that is so, then *prima facie* Rs. 39.17 Crores would have to be added to Rs. 26.28 Crores, which according to the appellant is the principal amount due from the appellant to the 2nd respondent under that head. If it is so added, the principal amount would come to Rs. 65.45 Crores. In addition, the delayed payment surcharge is also required to be added to this amount. We are, therefore, of the opinion that the appellant should pay an amount of Rs. 100 Crores to the 2nd respondent within a period of four weeks from the date of receipt of this order. Needless to say that this amount would be subject to the outcome of this appeal. Further, this payment is subject to the 2nd respondent furnishing a bank guarantee of a nationalized bank for the sum of Rs. 100 Crores in favour of the appellant. It is made clear that all the observations and calculations made in this order are *prima facie* observations and calculations.

Subject to the deposit of the aforesaid amount, the impugned order shall remain stayed during pendency of the Appeal.

With the above observations, the Application is disposed of.

Post the main Appeal on 04.03.2015. In the meantime, pleadings be completed.

(Rakesh Nath)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

REPORTABLE/UNREPORTABLE

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