

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

**R.P. NO. 14 OF 2015
IN
APPEAL NO. 70 OF 2013**

Dated : 18th May, 2015

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

In the matter of :

RattanIndia Power Ltd.,
12th Floor, Tower A, Building N O.5,
DLF Cyber City,
Gurgaon, Haryana-122002.

.....Review Petitioner/
Respondent-3
(In A.No. 70 of 2013)

Versus

1. Wardha Power Company Limited,
8-2-293/82/A/431/A,
Road NO.22, Jubilee Hills,
Hyderabad-500033.

..... Appellant/
Respondent(s)
(In A.No. 70 of 2013)

2. Maharashtra Electricity Regulatory Commission,
World Trade Centre No.1, 13th Floor,
Cuffee Parade, Colaba,
Mumbai-400001.

3. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, 5th Floor,
Bandra (East),
Mumbai-400051.

4. Adani Power Maharashtra Limited,
Adani House Nr. Mithakhali Circle,
Navrangpuraa,
Ahmedabad-380009.
5. Dr. Ashok Pendse,
Consumer Representative,
Thane Belapur Industries Association,
Rabale Village, Post Ghansoli,
Plot P-14, MIDC,
Navi Mumbai-400071.
6. Prayas Energy Group,
Consumer Representative,
Athwale Corner, Karve Road,
Deccan Gymkhana,
Pune-411004.

.....Respondents

Counsel for the Review Petitioner/
Respondent No.3

: Mr. Ramji Srinivasan, Sr. Adv.
Mr. Anurag Sharma
Ms. Sara Sundaram
Mr. Rishabh Kapur

Counsel for the Appellant/
Respondents

: Mr. Anand K. Ganesan
for Wardha Power
Mr. Amit Kapur
Ms. Poonam Verma
Mr. Gaurav Dudeja
for Adani Power
Mr. Kiran Gandhi
Mr. Udit Gupta
Mr. Buddy A Ranganadhan
for MERC
Mr. D.V. Raghuvanshy

ORDER

RAKESH NATH, TECHNICAL MEMBER

This Review Petition has been filed by RattanIndia Nashik Power Limited in Appeal No. 70 of 2013.

2. The Review Petitioner has stated that the company was earlier incorporated with the name of Indiabulls Realtech Limited. The name of the company has been changed to RattanIndia Nashik Power Limited. The Review Petitioner had appeared before this Tribunal in the main appeal as Indiabulls Realtech Limited. The Review Petitioner has enclosed a copy of the certificate from Registrar of the Companies, Delhi in this regard.
3. The Review Petitioner has pointed out the following errors in the judgment dated 10.02.2015 passed by this Tribunal in Appeal No. 70 of 2013:-
 - (i) Wardha Power Company Ltd., the Respondent No.1 was not a party out of its own volition violation in the proceedings before the Commission and, therefore, was not an aggrieved party and as such had no right to file the Appeal No. 70 of 2013. The

Tribunal ought to have taken note of the above fact before deciding the issue on the merit of the case.

- (ii) The Tribunal ought not have decided that the Review Petitioner being the 4th successful bidder (L-4) in the bidding should supply power at the same rate as the L-3 bidder i.e. Rs.3.280 per kWh when the bidding process threw a tariff of Rs.3.42 per kWh. The same tariff ought to have been considered for procurement of additional power from the Review Petitioner.
 - (iii) The Respondent No.1 had in the competitive bidding had offered power from its power station in Chhattisgarh. Now Respondent no.1 is offering power from its power plant in Maharashtra. Change of source of power is not permissible in case I bidding. Therefore Respondent no.1 cannot be termed to be qualified bidder to supply electricity to MSEDCL.
 - (iv) Review Petitioner being the L-4 bidder in the bidding process should be first asked to supply the required quantum of additional power before asking the Respondent No.1 who was L-5 bidder.
4. We have heard Shri Ramji Srinivasan, Learned Senior Counsel for the Review Petitioner, Shri Anand K. Ganesan, Learned Counsel for

Wardha Power, Shri Buddy A. Ranganadhan, Learned Counsel for State Commission and Learned Counsel for MSEDCL.

5. Shri Anand K. Ganesan opposed the Review Petition stating that it was an Appeal in the guise of a Review Petition. The issues have already been decided by the Tribunal in the impugned judgment. Further the Review Petitioner has already filed an Appeal against the judgment dated 10.02.2015 of the Tribunal. Therefore, the Review Petition is not maintainable. He further stated that they have already given their offer to MSEDCL at Rs. 3.280 per kWh as directed by the Tribunal. Further, Wardha Power has offered power from power plant in Maharashtra as MSEDCL wanted to source power from Maharashtra State itself. However, they are willing to offer power from their Chhattisgarh plant also.
6. Shri Buddy A. Ranganadhan informed that the State Commission has *suo motto* initiated proceedings in the matter as per the direction of the Tribunal.
7. Shri Ramji Srinivasan, Learned Senior Counsel for the Review Petitioner argued that Review Petition filed earlier to filing of Appeal is maintainable irrespective of the fact that an Appeal which is filed subsequently is pending. He stated that the Review Petition has

been filed before filing the Appeal against the judgment of the Tribunal. He referred to Thungabhadra Industries Limited Vs. Government of Andhra Pradesh, AIR 1964 SC 1372.

8. In Thungabhadra Industries, Hon'ble Supreme Court decided that order 47 Rule 1(1) of the CPC permits an application for review being filed "from a decree or order from which an Appeal is allowed but from which no appeal has been preferred." It was seen that on the date when the application for review was filed, the Appellant had not filed an appeal before the Hon'ble Supreme Court. It was held that the terms of Order 47 Rule 1(1) did not stand on the way of the petition for review being entertained. Accordingly, the Review Petition is maintainable.
9. On the first issue raised by the Review Petitioner that Wardha Power, Respondent No.1 is not an aggrieved party, this Tribunal has given a clear finding in paragraphs 18 to 23 of the judgment that Wardha Power was an aggrieved party. The Petitioner is only rearguing his case. There is no error apparent on the face of the record.
10. On the second issue regarding direction to match the price of Rs.3.280 per kWh, this Tribunal has given detailed findings in

paragraphs 52 and 53 of the judgment. On this issue, the Petitioner has not pointed out any error apparent on the face of the record.

11. It is pointed out by the Review Petitioner that Wardha Power had made a bid from their Chhattisgarh plant for which they were qualified in the bidding and not for their Maharashtra plant. We find that this issue was neither argued before this Tribunal nor mentioned in the Written Submissions filed by the parties. In our judgment, we have held that Wardha Power Company was the qualified bidder L-5 and should be allowed to match price of levellised tariff of Rs.3.280 per kWh. Learned Senior Counsel for the Review Petitioner fairly accepted that this might have escaped their attention during arguments but it was mentioned in their reply. The order dated 28.12.2010 by which the State Commission approved adoption of tariff for procurement of power was not under challenge before us. In our judgment also we have held that Wardha Power Co. was a qualified bidder without mentioning name of the power plant as this issue was never raised before us. There is no dispute that Wardha Power Co. was the qualified bidder. Wardha Power has indicated that they are willing to offer power from their Chhattisgarh plant as also from Maharashtra plant. Therefore, we do not want to go into this

controversy at Review stage. We find that the State Commission has already initiated *suo motu* proceedings in the matter on the basis of our judgment. The State Commission may consider and decide the source of power being offered by Wardha Power Co. as per law.

12. As regards the contention of Review Petitioner for giving the opportunity for additional power to them in precedence over Wardha Power Company, this Tribunal has given a specific finding in paragraph 52 of the judgment. We do not find any error apparent on the face of the record.
13. We take this opportunity to correct a typographical error which has come to our notice while deciding this Petition. On page 74 of the judgment under Paragraph 52, in the last sentence “successful bidders (L4 & L5 respectively)” may be replaced by “qualified bidders (L4 and L5 respectively)”.
14. The Review Petition is disposed of with the above directions.
15. Pronounced in the open court on this **18th day of May, 2015.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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