

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

**IA No. 76 of 2007 in  
Appeal No.251 of 2006**

**Dated the 12<sup>th</sup> July , 2007.**

Present: - Hon'ble Mr. H.L. Bajaj – Technical Member  
Hon'ble Mrs. Justice Manju Goel, Judicial Member

Reliance Energy Limited  
Reliance Energy Center,  
Santacruz(East) Mumbai

...Appellant

Versus

1. The Maharashtra Electricity Regulatory Commission  
Cuffe Parade, Colaba  
Mumbai-400005
2. Mumbai Grahak Panchayat  
Sant Dnyaneshwar Marg  
Vile Parle(W), Mumbai-400056
3. Prayas C/o Amrita Clinic,Athawale Corner  
Karve Road, Pune-411004
4. Thane Belapur Industries,  
Post Ghansoli, Navi  
Mumbai-400071
5. Vidarbha Industries Association  
Civil Lines, Nagpur-440001
6. Lata Enterprises  
S.V.Road, Borivali(W)  
Mumbai-400092
7. Bombay Small Scale Industries Association  
Sonewala Cross Road No. 2, Goregaon(E)  
Mumbai-400063

8. Vel Induction Hardenings  
Waman Tukaram Patil Marg, Deonar  
Mumbai-400088

.....Respondents

For the appellants : Mr. J.J. Bhatt, Sr. Advocate  
Mrs. Anjali Chandurkar, Advocate  
Mr. D.J. Kakalia, Advocate  
Mr. Syed Naqvi, Advocate  
Ms Smieetaa Inna, Advocate

For the respondents: Mr. Buddy A. Ranganadhan, Advocate with  
Mr. Arijit Maitra for MERC (R-1)  
Mr. Suresh Gehani, Consultant (MERC)

### **Judgment**

#### **Mr. H.L. Bajaj, Hon'ble Technical Member**

The present application has been taken out on behalf of the appellant, Reliance Energy Ltd. (REL in short) seeking clarification of the judgment and order dated April 08, 2007 passed by this Tribunal in Appeal No. 251 of 2006.

Appeal No. 251 of 2006 was filed by REL on October 30, 2006 challenging order dated October 03, 2006 passed by MERC.

At the final hearing of the appeal, REL filed written submissions. During the course of arguments of the appeal on February 20, 2007 REL made certain additional submissions before this Tribunal. In respect of these additional

submissions which were a part of the written submissions, REL sought liberty from this Tribunal to amend the Memo of Appeal which was allowed by this Tribunal on February 21, 2007. Consequently amendments were carried out by REL to the Memo of Appeal. In Ground 6.14 A(ii) REL had submitted that the inclusion of the REL's contingency reserve of Rs. 75.45 crores in REL's ARR in question was contrary to Regulation 76.9.2 of the MERC (Terms & Conditions of Tariff) Regulations, 2005. REL had inter alia contended in Ground 6.14 A(iii) that MERC had erred in deducting the said amount of contingency reserve from REL's ARR for FY 2006-07 (page 129 para 7.17 of the Memo of Appeal). MERC filed its submissions on February 20, 2007 in reply to the said additional grounds. REL filed its reply to MERC's said submissions on March 5, 2007. The additional ground has not been dealt with by us on account of oversight. The non mention of this ground be not read as dismissal of the same. We propose to deal with the ground now.

It is contended by the applicant that it appears that the issue of treatment of contingency reserves as distributable surplus in REL's ARR by FY 2006-07 has not been addressed by this Tribunal inadvertently. REL had inter alia contended that the treatment of contingency reserve ought to be as provided in paras III, IV and V of the Sixth Schedule to the Electricity (Supply) Act, 1948 inasmuch as the said contingency reserve related to the period prior

to FY 2006-07. For the period FY 2006-07 onwards the MERC (Terms & Conditions of Tariff) Regulations 2005 were made applicable. The treatment of surplus under the said Regulations of 2005, Clause, 76.0 was identical to the Sixth Schedule of Electricity (Supply) Act, 1948.

Having regard to the contentions of the applicant we now proceed to examine the issue. It is good practice to set aside an amount of money to meet unexpected conditions and unforeseen losses in business. This amount so set aside is called Contingency Fund in accounting terminology. This supplements the Contingency Reserve which is defined as “an amount of money established from retained earnings to allow for unforeseen losses in business”.

It is necessary to set out the relevant portions of the MERC (Terms and Conditions of Tariff) Regulations, 2005 which stipulates:

*“19.1 The approved aggregate gain to the Generating Company or Licensee on account of controllable factors shall be dealt with in the following manner:*

*(a) One-third of the amount of such gain shall be passed on as a rebate in tariffs over such period as may be specified in the order of the Commission under Regulation 17.10:*

*(b) In case of a licensee, one-third of the amount of such gain shall be retained in a special reserve for the purpose of absorbing the*

*impact of any future losses on account of controllable factors under clause (b) of Regulation 19.2: and*

*(c) The balance amount of gain may be utilized at the discretion of the Generating Company or licensee.*

*19.2 The approved aggregate loss to the Generating Company or licensee on account of controllable factors shall be dealt with in the following manner:*

*(a) One-third of the amount of such loss may be passed on as an additional charge in tariffs over such period as may be specified in the order of the Commission under Regulation 17.10: and*

*(b) The balance amount of loss shall be absorbed by the Generating Company or licensee.”*

The *amount of loss* mentioned in MERC Regulation 19.2(b) above can be absorbed by a licensee only if a Contingency Reserve is available as provided for in Regulation 19.1(b).

It is obvious from the above mentioned MERC Regulations that the Contingency Reserve to the extent possible under Regulation 19.1(b) cannot be adjusted against the Annual Revenue Requirement and it has to be treated in line with the MERC's own Regulations. We therefore, order accordingly.

In the result, the application for clarification regarding the issue of Contingency Reserve of Rs. 75.45 crores for the year 2006-07 is allowed. This be read as a part of our judgment dated April 8, 2007 in Appeal No. 251 of 2006.

(Mrs. Justice Manju Goel)  
Judicial Member

(H.L. Bajaj)  
Technical Member