

**COURT-I**

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**APPEAL NO. 297 OF 2015 & IA NO. 12 OF 2016  
& IA NOS. 1203 & 1475 OF 2018**

**Dated: 12<sup>th</sup> November, 2018**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**BSES Rajdhani Power Ltd.**

**...Appellant(s)**

**Vs.**

**Delhi Electricity Regulatory Commission**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. Buddy A. Ranganadhan  
Mr. Raghav Chadha  
Ms. Bhargavi Kanan  
Ms. Aishwarya Modi

Counsel for the Respondent(s) : Mr. Pradeep Misra  
Mr. Manoj Kr. Sharma for R-1

**ORDER**

**IA NO. 1475 OF 2018 IN  
APPEAL NO. 297 OF 2015**

Learned counsel for the Appellant has filed this application seeking the following relief:

- a) ***Allow the present Application permitting the Applicant/Appellant to withdraw Issue No. 60 (Arbitrary determination of efficiency factor for FY 16) from Appeal No. 297 of 2015 in the appeal and give liberty to the Applicant/Appellant to pursue the said issues before the State Commission in proceedings arising from Order dated 28.03.2018 in Petition No. 68 of 2017 with all questions being kept open;***

In the present appeal, several issues are raised at the stage of hearing arguments on merits. During the pendency of this appeal, the present application is being made seeking permission to withdraw the appeal so far as Issue No. 60 (Arbitrary determination of efficiency factor for FY 16) on the ground that the Respondent-Commission by Order dated 28.03.2018 while dealing with the issues of true-up upto FY 2016-17 and annual tariff for FY 2018-19 in Petition No. 68 of 2017 rendered a finding with regard to Arbitrary determination of efficiency factor for FY16. Against the said Order, dated 28.03.2018, in Petition No. 68 of 2017, an appeal came to be filed before this Tribunal being Appeal No. 193 of 2018 on 47 tariff issues. A Review Petition is also filed before the State Commission on 9 tariff issues being Review Petition No. 30 of 2018. The issue of Arbitrary determination of efficiency factor for FY16 has not been raised in Appeal No. 193 of 2018 and has been raised in Review Petition No. 30 of

2018. The State Commission had in the said order dated 28.03.2018 accepted the stand of the Appellant on this issue and granted relief to the Appellant for the FYs 2012-13 to 2014-15. However, the same relief was erroneously not extended to FY 2015-16. Hence, the Appellant has filed the Review Petition No. 30 of 2018 before the State Commission. During the proceedings before the State Commission, the State Commission expressed its opinion that since the instant Appeal being Appeal No. 297 of 2015 is pending before this Tribunal wherein the issue of Arbitrary determination of efficiency factor for FY16 is under challenge, the State Commission may not consider the said issue till the disposal of the present appeal. Therefore, the Appellant, as a measure of abundant caution, has come up with this application seeking leave to withdraw issue No.60 (Arbitrary determination of efficiency factor for FY16) from the present appeal with liberty to address the same in the review petition pending before the State Commission i.e., Review Petition No. 30 of 2018.

For the reasons set out above and in order to allow the Appellant to seek early disposal of the issue so far as Arbitrary determination of efficiency factor for FY16, we are of the opinion that the directions sought in the application deserves to be allowed. Accordingly, in the interest of justice and equity, we dispose of this application reserving liberty to the

Appellant to file necessary application before the State Commission seeking appropriate relief with regard to Issue No. 60 (Arbitrary determination of efficiency factor for FY16). All contentions raised in the instant appeal so far as other issues are kept open. Accordingly, the Application is allowed. The Appellant shall carry out necessary amendments in the appeal within two weeks from today.

**(S. D. Dubey)**  
**Technical Member**  
*ts/mk*

**(Justice Manjula Chellur)**  
**Chairperson**