

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

**IA NO. 308 OF 2017 IN  
APPEAL NO. 2 OF 2015**

**Dated: 16<sup>th</sup> May,2017**

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member**

**IN THE MATTER OF:-**

**Gujarat Urja Vikas Nigam Limited**

Sardar Patel Vidyut Bhavan,  
Race Course, Vadodara - 390007

...Appellant(s)

Vs.

**1. Gujarat Electricity Regulatory Commission**

6<sup>th</sup> Floor, GIFT ONE, Road 5C, Zone 5,  
GIFT CITY, Gandhinagar – 382 355  
Gujarat, India

...Respondent(s)

**AND IN THE MATTER OF**

**2. Essar Power Limited**

Essar House,  
11, Keshavrao Khadye Marg,  
Mahalaxmi, Mumbai – 400034

...Respondent No.2/  
Applicant

**Counsel for the Appellant(s) :** Mr. M.G. Ramachandran  
Mr. Anand K. Ganesan  
Ms. Ranjitha Ramachandran  
Mr. Shubham Arya  
Ms. Poorva Saigall

**Counsel for the Respondent(s) :** Ms. Suparna Srivastava  
Mr. Rahul Srivastava a/w  
Mr. S.R. Pandey (Rep.) for **R.1**  
  
Mr. Buddy A. Ranganadhan  
Mr. Alok Shankar

Mr. Mahesh Agarwal  
Ms. Neeha Nagpal  
Mr. Sumanta  
Mr. Vikrant Pachnanda  
Mr. Nirivay Gupta  
for **R-2/Applicant**

## **ORDER**

1. The present appeal is filed by the Appellant – Gujarat Urja Vikas Nigam Limited against the judgment and order dated 22/10/2014 passed by the Gujarat Electricity Regulatory Commission, the 1<sup>st</sup> Respondent herein (“**the State Commission**”).

2. By the impugned order the State Commission has allowed various claims made by Essar Power Ltd – the Applicant/Respondent No.2 against the Appellant and directed the parties (the Appellant and the Applicant) to work out the amount payable by the Appellant to the Applicant.

3. The Appellant filed I.A No.2 of 2015 praying that the impugned order be stayed. In that application, the Appellant in its rejoinder stated as under:

*“3. At the outset, the Appellant states that the extent of the claim of Essar Power Limited under the above heads is far in excess of the amount that would be payable even if the State Commission’s Order is implemented as such without any interference by this Hon’ble Tribunal. The Respondent Essar Power Limited has claimed in aggregate of Rs.680.65 crores against the Appellant, whereas the implementation of the impugned Order of the State Commission in toto would result in the liability of the Appellant to the Respondent Essar Power Limited exclusive of the Delayed Payment Surcharge (interest) of an amount of Rs.92.65 crores only of the principal amount. The interest on the above amount calculated for the over-due period would be only Rs.92.99 crores. The aggregate amount as on 10.12.2014 would be limited to Rs.185.65 crores only.”*

4. Taking into account the rejoinder of the Appellant and on a *prima facie* view of the matter, this Tribunal directed the Appellant to pay to the Applicant an amount of Rs.100 crores within a period of four weeks on the Applicant, furnishing a bank guarantee of a nationalised bank for the said amount. The impugned order was directed to be stayed if the above condition was complied with. We are informed that accordingly the said amount has been paid by the Appellant to the Applicant.

5. In this application the Applicant has prayed that the Appellant may be directed to pay to the Applicant the additional amount of Rs.86.65 crores on such terms and conditions as may be deemed fit and proper.

6. We have heard Mr. Ranganadhan learned counsel appearing for the Applicant. Counsel submitted that as per the rejoinder filed by the Appellant the aggregate amount due from the Appellant to the Applicant is Rs.185.65 crores. Out of this amount only Rs.100 crores has been directed to be paid to the Applicant. Counsel furnished certain data in support of his contention that the Applicant is in great financial strain. It is submitted that due to various business exigencies as well as commercial hardships, the Applicant has been forced to shut down its power plant. It is unable to service its debts. Counsel submitted that in the circumstances appropriate directions be issued in the interest of justice and equity.

7. Mr. Ramachandran learned counsel appearing for the Appellant on the other hand submitted that this Tribunal has

already given relief to the Applicant vide order dated 29/01/2015. There is no justification for seeking variation of the said order as there is no change in circumstances. In this connection he relied on **Arjun Singh v. Mohindra Kumar & Ors**<sup>1</sup>. Counsel drew our attention to the judgment of the Supreme Court in **Civil Appeal No.3455 of 2010 dated 09/08/2016** and contended that on the contrary a substantially large amount is due to the Appellant from the Applicant and therefore the application deserves to be dismissed.

8. We have given our anxious consideration to the submissions advanced by the parties. Undoubtedly the Applicant appears to be in great financial strain for a considerable period. By order dated 29/01/2015 this Tribunal has already given it some relief. It is made clear in that order that observations as well as calculations made in that order are prima facie. From the rejoinder filed by the Appellant at an interim stage one cannot draw a final conclusion that the Appellant has quantified and admitted its

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<sup>1</sup> 1964 SCR 946

liability. It must be remembered that the impugned order directs the parties to evaluate the amount recoverable by Respondent No.2 from the Appellant. Therefore the exact liability is not fixed as yet. In these circumstances some interim relief has been granted to the Applicant. At this stage in the absence of any change in circumstances no further relief can be granted to the Applicant. The strained financial condition of the Applicant has persisted over a long period. That cannot be a change in circumstances. Moreover, it is the case of the Appellant that under the aforementioned judgment of the Supreme Court it is entitled to receive a huge amount from the Applicant. It is submitted by Mr. Ranganadhan that that judgment relates to a distinct matter. We do not want to express any opinion on this aspect or go deep into facts of that case. But all the same that will be one of the considerations at this *prima facie* stage for denying relief to the Applicant.

9. In the circumstances the application is dismissed.

**I.J. Kapoor**  
**[Technical Member]**

**Justice Ranjana P. Desai**  
**[Chairperson]**