

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

Interlocutory Application Nos. 20 of 2008
in Appeal No. 269 of 2006

Dated : 01st April, '08

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

**M/s. Poddar Alloys (Pvt.) Ltd. ... Applicant(s)
Versus
Uttaranchal Electricity Regulatory Commission & Anr.
...Respondent(s)**

Counsel for the Applicant(s) : Mr. M. L. Lahoty and
Mr. Paban K. Sharma

Counsel for the Respondent(s) : Mr. M. G. Ramachandran,
Mr. Anand K. Ganesan and
Ms. Swapna Seshadri for UPCL

Mr. Suresh Tripathy for UERC

J U D G M E N T

Ms. Justice Manju Goel, Judicial Member

1) This application seeks direction under section 62(6) of the Electricity Act 2003 in respect of interest payable on the excess amount which the respondent has to refund as per this Tribunal's judgment in appeal Nos. 269 of 2006 and 12 of 2007. Both the appeals were directed against the order of 13th November, 2006 to

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the extent it violated the order of 02nd June, 2006 passed by this Tribunal. In both the appeals relief claimed was for setting aside that order or in the alternative to restore the tariff as was in vogue before August, 2004. Both the appeals also sought direction on the respondent, Uttaranchal Power Corporation Ltd. (UPCL for short), to refund/adjust the excess amount recovered by it to the concerned steel units along with appropriate rate of interest. This Tribunal vide judgment dated 23rd May, 2007 allowed the two appeals to some extent and remanded the issue of redetermination of tariff, for the period of September 2004 to March 2005 and for the year 2005-06, for the power intensive industries within four weeks of the order by taking into account : (1) Pooled average cost of power purchased, (2) T&D losses of 20%, (3) Subsidies of Rs.0.87 per unit and Rs.0.70 per unit for the years 2004-05 and 2005-06 respectively. This Tribunal finally directed that the respondent, UPCL, shall refund the excess amount recovered by it to the appellants and other concerned steel units by adjustment in the eight monthly bills starting from August 2007. In the interlocutory application under consideration it is contended that orders be passed to direct the respondent to pay interest @ 18% while adjusting or refunding the excess amount recovered by UPCL.

2) We have heard Mr. M.L. Lahoti, appearing for the applicants and Mr.M.G.Ramachandran, advocate appearing for UPCL. There is a provision under section 62(6) of the Electricity Act 2003 for refund

of excess amount recovered by way of tariff along with interest equivalent to bank rate. While Mr.Lahoti insisted on interest but did not press his prayer for interest to be paid @ 18% p.a. Mr.M.G.Ramachandran did not dispute the liability to pay interest but prayed that the UPCL should be allowed to recover the interest paid as pass through in tariff.

3) The provisions of 62(6) are not strictly attracted to the case as the recovery made by UPCL follows the tariff order which we have set aside. UPCL has not made any excess recovery over and above the tariff order which would have attracted interest at bank rate. Section 34 of the Civil Procedure Code prescribes 6% as the interest to be awarded on any money decree.

4) It will be appropriate to award interest @ 6% on the amount which the UPCL has to refund in terms of judgment dated 13th May, 2007. The payment of interest cannot be attributed to any fault on the part of UPCL. Therefore, this should be passed through in tariff. We order accordingly and dispose the interlocutory application.

5) Pronounced in open court on this **01st day of April, 2008.**

(Justice Manju Goel)
Judicial Member

(H. L. Bajaj)
Technical Member

The End

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