

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

**APPEAL NO.617 OF 2023 &  
IA No. 227 of 2024**

**Dated: 13.09.2024**

**Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson  
Hon'ble Smt. Seema Gupta, Technical Member  
(Electricity)**

**In the matter of:**

**M/s HYDERABAD MSW ENERGY SOLUTIONS PVT. LTD.**

*Through its Authorized Signatory, Mr. DVS Ramarao*

Level 11B, Aurobindo Galaxy City,

Hyderabad Knowledge City

Hyderabad, Telangana-500081

... Appellant(s)

***VERSUS***

**1. TELANGANA STATE ELECTRICITY REGULATORY  
COMMISSION**

*Through its Secretary,*

5<sup>th</sup> Floor, Singareni Bhavan,

Red-Hills, Lakdi-ka-pul,

Hyderabad, Telangana – 500004

... Respondent No.1

**2. SOUTHERN POWER DISTRIBUTION COMPANY OF  
TELANGANA LIMITED**

*Through its Managing Director,*

Corporate Office, 6-1-50,

5<sup>th</sup> Floor, Mint Compound,

Hyderabad, Telangana – 500063

...Respondent No. 2

Counsel on record for the Appellant(s) : Matru gupta Mishra  
Swagitika Sahoo  
Ritika Singhal

Vignesh Srinivsan  
Ishita Thakur  
Sonakshi  
Nipun Dave  
Akanksha V. Ingole for App.  
1

Counsel on record for the Respondent(s) : Somandri Goud Katam for Res. 1

D. Abhinav Rao for Res. 2

## **ORDER**

### **IA No. 227 of 2024**

1. The Appellant - Hyderabad MSW Energy Solutions Pvt. Ltd has filed the IA No. 227 of 2024 in APL 617 of 2023 seeking for a direction to the Respondent Discom to recall the demand letter dated 16.01.2024 and to restrict them from taking any coercive action pending disposal of the captioned appeal.

2. The Appellant has preferred the instant appeal aggrieved by the order dated 28.06.2023 (“**Impugned Order**”) passed by the Telangana State Electricity Regulatory Commission (“**TSERC/ State Commission**”) in O.P No. 01 of 2022 with regard to the direction of reimbursement of tipping fee to Respondent Discom. The facts that are required for disposal of the present IA, in brief, are as under:

The Appellant M/s Hyderabad MSW Energy Solutions Pvt Ltd is a ‘generating company’, operating a 19.8 MW RDF based Waste-to-Energy plant (in short “WtE plant”) at Jawaharnagar, Hyderabad.

3. The Respondent No. 1 is the Tamil Nadu Electricity Regulatory Commission (“**TSERC/State Commission**”) and Respondent No. 2, Southern Power Distribution Company of Telangana Limited (“**TSSPDCL/ State Discom**”) is a Distribution Licensee operating in the State of Telangana which has been granted license by the Respondent Commission for carrying on the business of distribution and retail supply of electrical energy within its command area.

4. Pursuant to the Request for Proposal inviting tenders from bidders floated by Greater Hyderabad Municipal Corporation (“**GHMC**”) in October, 2008 for setting up of an Integrated Municipal Solid Waste Management Project at Hyderabad (“**IMSWM Project**”), Re Sustainability Limited (“**ReSL**”) participated and emerged as the Selected bidder on 21.02.2009, and ReSL and GHMC executed a Concession Agreement (**in short “CA**”) for setting up the IMSWM Project at Jawaharnagar.

5. Thereafter, ReSL established a Special Purpose Company (SPC) named Hyderabad Integrated MSW Limited (“**HIMSW**”) as a permitted assignee as per Clause 5.26 of the Concession Agreement (CA). This SPC was created to perform the operator functions for the IMSWM project and to collect the Tipping Fee from the GHMC as outlined in the CA. On 01.02.2012, ReSL, GHMC, and HIMSW entered into a tripartite Novation Agreement to formalize the relationships and responsibilities among the parties involved. HIMSW’s scope of work included collection, transportation, treatment and disposal of the Municipal Solid waste under CA by undertaking segregation, treatment, disposal of MSW and also disposal of the residual rejects into sanitary landfill.

6. Thereafter, the Government of Telangana issued G.O.Ms. No. 13, allowing the establishment of a 19.8 MW RDF-based WtE plant at Jawaharnagar and on 23.09.2017, Telangana State Pollution Control Board (TSPCB) granted consent to HIMSW to establish the 19.8 MW WtE Plant at Jawaharnagar. The Appellant Company was formed as SPC for implementing the waste to energy plant; all clearance/approval were amended/ made in the name of Appellant company including the consent granted by TSPCB vide their letter dated 02.05.2018. Subsequently on 21.05.2018, Appellant Company and HIMSW entered into an MoU for supply of RDF to the Appellant Company being generated from HIMSW's plant. The Appellant Company was granted sanction and approval for setting up the WtE plant from Telengana State Renewable Energy Development Corporation Ltd ("**TSREDCO**"), the nodal agency for the promotion of renewable energy projects in the State. On 29.01.2019, a Letter of authentication was granted by GHMC to ReSL, wherein authentication was granted to Appellant as an SPC to setup, operate and Maintain the WtE facility.

7. On 07.02.2019, the Appellant requested Respondent No. 2 for execution of a Power Purchase Agreement (PPA) for procurement of renewable energy generated from its Refuse Derived Fuel (RDF) based WtE project and subsequently, on 19.02.2020, a PPA was signed by the Respondent No 2 with the Appellant for purchase of power generated from 19.8 MW RDF-based power project located at Jawaharnagar, at the tariff to be determined by the TSERC ("State Commission").

8. The Respondent No 1 i.e. State Commission on 20.03.2020, in order to set the Generic Tariff for electricity produced from Refuse Derived Fuel (RDF) based power projects in Telangana, which would achieve COD between 01.04.2020 to 31.03.2024, issued a Public Notice inviting suggestions from stakeholders and the general public. After taking into account various stakeholders' submissions, the State Commission passed the generic tariff order in O.P. No. 14 of 2020 dated 18.04.2020; provision with regard to reimbursement of tipping fee is extracted as under:

*"91. The Commission has gone through the stakeholders' submission regarding the Tipping Fee. The Commission does not subscribe to the stakeholders' submission that the Tipping Fee is to cover the difference between the sum of revenue from sale of all products and the O&M expenses. Tipping Fee means a fee or support price determined by the local authorities or any state agency authorised by the State Government to be paid to the concessionaire or operator of waste processing facility or for disposal of residual solid waste at the landfill. When the cost-plus tariff for electricity generated from waste is determined under Section 62 of the Electricity Act, 2003 by allowing all the legitimate expenses plus Return on Equity, **the benefit of Tipping Fee should be passed on to the ultimate consumers of electricity as otherwise it would amount to double recovery for the same expenses through electricity tariff and Tipping Fee.** Therefore, the Commission directs that the Tipping Fee should be reimbursed to the Distribution Licensee(s) by the generator on receipt of the same under the provisions of its Concession Agreement. The impact of Tipping Fee cannot be directed to be deducted upfront in the tariff as there may be a time gap between the developer's claim for Tipping Fee and the actual receipt from the authorities and the generator should not be subject to financial stress during this period.*

*92. The commission is not expressing any opinion on some of the Stakeholder's submission that their projects are not entitled to any Tipping fee. It is the responsibility of the Distribution Licensee(s) to verify the facts and make claims for the implementation of the Commission's direction regarding the reimbursement of tipping fee."*

9. The WtE plant of the Appellant achieved Commercial Operation Date ('COD') on 20.08.2020 and commenced supplying the power generated therefrom under the PPA.

10. The Government of Telangana on 05.12.2020 granted permission to the Appellant company to increase the capacity of its existing 19.8 MW Waste-to-Energy (WtE) plant for solid waste disposal to 48 MW at Jawaharnagar. This approval was granted as a standalone case, recognizing the project as an environmentally beneficial activity.

11. From time to time, Appellant had informed Respondent No. 2 and other relevant bodies that it did not receive any Tipping Fee from GHMC as per the provisions of CA and also through its undertaking on 12.01.2021, the Appellant informed Respondent Discom that it does not receive any Tipping Fee from GHMC and affirmed that it also did not receive any grant from either GHMC or from the Government of Telangana for setting up of 19.8 MW RDF based WTE plant. However, on 19.01.2021, the Telangana State Power Coordination Committee ("**TSPCC**") requested the Appellant to reimburse the Tipping Fee to Respondent No. 2 upon receipt of the same from the relevant authority; the Appellant however reiterated its stand to TSPCC and GHMC stating

that it is not receiving any Tipping Fee and therefore cannot pass it on to the Respondent No. 2.

12. Subsequently, Respondent No. 2 on 16.07.2021 issued a notice to the Appellant stating that the Appellant is obligated to reimburse Respondent No. 2, the Tipping Fee allegedly received from GHMC under the terms of the Concession Agreement, and in case, the Tipping Fee is not reimbursed within one month from the notice date, Respondent No. 2 would be entitled to deduct the equivalent amount from the energy payments due to the Appellant. Aggrieved thereby, the Appellant filed a petition bearing no. O.P. No. 01 of 2022 with the State Commission on 10.12.2021 with the prayer to quash the said notice.

13. On 28.06.2023, the State Commission passed the Impugned Order, dismissing O.P. No. 01 of 2022 and holding that Respondent Discom Claim is within the provisions of PPA dated 19.02.2020 and generic tariff order dated 18.04.2020 passed in O.P. No 14 of 2020 and Appellant being the assignee of ReSL & HIMSW, is liable to reimburse the tipping fee being paid by GHMC under the Concession Agreement.

14. Challenging the said order, the Appellant has preferred the present appeal and this Tribunal vide its interim order dated 24.08.2023 in IA No 1690 of 2023 directed the Responded No 2 to compute the RDF component of the Tipping Fee, while providing the Appellant an opportunity to put forth its objections and thereafter finalize the RDF component of Tipping fee. Relevant extract of the order of this Tribunal dated 24.08.2023 is given as under:

*“The jurisdiction, which the 1st Respondent-Commission exercises, is only in terms of the provisions of the Electricity Act, and the rules and regulations made there under. Since generating companies are required to segregate their accounts, and maintain separate accounts for its generation activities, we are prima facie of the view that, even if all the contentions. urged on behalf of the Appellant are later held not to merit acceptance, the liability, which can be fastened on them, is only with respect to that portion of the tipping fee which relates to Refuse Derived Fuel (RDF), that too only to the extent of the fuel cost forming part of the levelised tariff, which the 2nd Respondent has been directed to pay to Appellant; and any other amount, which the holding company of the Appellant may have received from the GHMC as tipping fee, would, prima facie, fall beyond the jurisdiction of the 1st Respondent-Commission, as it does not relate to generation of electricity.*

*Tipping fee, as referred to in clause 13.3 of the PPA, can only mean that part of the tipping fee which relates to RDF, and forms part of the fuel cost component for which levelised variable tariff has been paid by the 2nd Respondent to the Appellant. Since the 2nd Respondent has not determined the RDF component of the tipping fee, and as the Appellant's liability to reimburse the tipping fee received as incentive would be limited to the cost of RDF and nothing more, we are of the view that, before calling up on the Appellant to reimburse that part of the tipping fees which represents RDF, the 2nd Respondent should undertake the exercise of computing the RDF component of the tipping fees.*

*Mr. D Abhinav Rao, Learned Counsel for the 2nd Respondent, would submit that it is only if the Appellant makes available its records, for verification by the 2nd Respondent, would they be in a position to determine the RDF component of the tipping fee. Mr. Basava Prabhu*

*Patil, Learned Senior Counsel appearing on behalf of the Appellant, submits that, within two weeks of receipt of intimation from the 2nd Respondent of the details required by them, the Appellant shall furnish the said information to them.*

*The 2nd Respondent shall, after receipt of information from the appellant, compute the RDF component of the tipping fee, provide the Appellant an opportunity to put forth its objections to such computation, and thereafter finalize the RDF component of the tipping fee. It is open to the 2nd Respondent, thereafter, to raise a demand on the Appellant for payment of the said amount. Till such a demand is raised by the 2nd Respondent, the monthly dues payable by the 2nd Respondent to the Appellant, in terms of the bills raised by them, shall be continued to be paid.”*

15. Pursuant to the Interim order dated 24.08.2023 of this Tribunal, Respondent No2/ State Discom issued a demand notice dated 16.01.2024 approximately for Rs 114 Crore for demand period from 20.8.2020 till 31.03.2023 payable within 30 days. Relevant extract of the demand notice is as given below:

*"12) In the circumstances mentioned above, in pursuance of the order dated 24.08.2023 in I.A No. 1690 of 2023 in Appeal No.617 of 2023 of the Hon'ble APTEL, DEMAND NOTICE is hereby raised for an amount of Rs 114.842 Cr (Rupees One Hundred Fourteen Crore Eighty Four Lakh Twenty Thousand only) for the period from 20.08.2020 till 31.03.2023 (comprising Rs 30.4210 Cr (for Collection & Transportation) and Rs 84.421 0 Cr (for Treatment & Disposal)) towards reimbursement of Tipping fee to TSSPDCL pertaining to 19.8 MW RDF based power project of M/s. Hyderabad MSW Energy*

*Solutions Private Limited located at Jawaharnagar village, Kapra Mandal, Medchal District, Detailed calculation sheets are enclosed herewith for ready reference.*

*13) M/s. HMESPL is hereby requested to reimburse the aforementioned amount to TSSPDCL within one month from the date of receiving of this DEMAND NOTICE. Failing which TSSPDCL would be constrained to deduct the same from the energy bills. The same shall be obliged for all future Tipping Fee receivable from GHMC for the entire tenure of the PPA."*

16. Aggrieved by the demand notice dated 16.01.2024, the Appellant has filed present IA. Mr Sanjay Sen, learned senior counsel for the Appellant submitted that the State Commission vide its generic tariff order dated 18.04.2020 in O.P. No 14 of 2020 has determined levelised tariff of Rs.7.84 / kWh comprising of Levelised Fixed Cost of Rs.3.42/kWh and Levelised Variable Cost of Rs.4.42/kWh which shall be applicable for the RDF based power projects in the State of Telangana achieving COD during the period from FY 2020-21 to FY 2023-24; in the tariff so determined the capital cost of only Rs 9 Crore/MW is considered for determination of fixed cost and the recovery of capital cost of RDF production facilities is inbuilt in RDF price, recoverable as part of variable cost.

17. Learned Senior counsel for the Appellant submitted that demand notice dated 16.01.2024 is not only *ex-facie* illegal but contrary to the directions issued by this Tribunal under Interim order dated 24.08.2023; Respondent No 2/ State Discom has ignored the categorical direction of this Hon'ble Court to *prima facie* limit the computation of its claim to

"RDF component of the Tipping Fee". Learned senior counsel for the Appellant further submitted that activities of Collection and Transportation ("C&T") undertaken by the Concessionaire/Special Purpose Company (SPC) under a separate Concession Agreement has no bearing on the "RDF component of the Tipping Fee" as "RDF" does not even come into existence at the stage of C&T. Hence, there cannot be any RDF Component of tipping fee received qua C&T to the Concessionaire/SPC; demand notice dated 16.01.2024 has simply rejected the aforesaid objection taken by the Applicant and issued claim of Rs 30.4210 Crores for C&T services performed by different SPC under the Concession Agreement for the period 20.08.2020 to 31.03.2023 .

18. Learned senior counsel for the Appellant also submitted that absurdity of the demand notice issued by the State commission can be seen from the facts that based on methodology adopted for reimbursement of Tipping fee, as sought by the Respondent No 2/ State Discom, the total amount to be reimbursed to State Discom would be Rs 148.86 Crore for the FY 2023 -24, while the total revenue that can accrue to the Appellant by sale of power is Rs 146.70 Crore from the WtE plant; as a result thereof, the Appellant not only supplies energy to the State Discom, free of cost, but is also required to reimburse an additional amount. Learned senior counsel for the Appellant reiterated that it does not receive any tipping fee from GHMC, and therefore, it is not liable to reimburse any amount to the Discom. Without prejudice to its right, even if it is assumed that some amount is to be reimbursed to State Discom, in the formula of reimbursement of tipping fee given by State Discom, the reimbursement of tipping fee is more than the

variable cost received by the Appellant from the State Discom, in which cost of RDF is only one component with complete disregard to other expenses which encompasses the entire spectrum of activities involved in collection, transportation, segregation, treatment, disposal, environment monitoring, infrastructure management and more. These costs are substantial and include manpower, equipment, machinery, maintenance, consumables, treatment processes, fuel and electricity charges, compliances with environmental regulations and other essential aspects of efficient waste management; focussing solely on revenue generated while ignoring the underlying operational costs misrepresents dynamics of the Applicant, or even the Concessionaire.

19. In response to the query raised by this Tribunal vide its order dated 03.05.2024, regarding the variable cost incurred by the Appellant for generation of Electricity in order to make an interim arrangement, the Learned senior counsel for the Appellant, without prejudice to their rights and Contentions, submitted following calculation in relation to reimbursement of tipping fee pertaining to only Treatment and Disposal component corresponding to actual quantity of RDF utilised in generation of electricity, based on conversion factor provided by GHMC.

A	B	C	D	E	F	G	H
Period	Energy as admitted by Respondent (In TSSPDCL (In MUs)	RDF Used (In Tons)	Conversion Factor for RDF from Mixed MSW per GHMC	Tip Fee received by M/s HIMSW (In Rs/Ton of Mixed MSW)	RDF Component of Tipping Fee	Reimbursement (In Rs Crs)	Impact in terms of Rs /kwh
			CF*	T&D			
FY 20-21	61.58	98525	0.37	685.4	253.60	2.50	0.41
FY 21-22	109.81	175701	0.35	702.1	245.74	4.32	0.39
FY 22-23	120.51	192801	0.48	761.3	365.42	7.05	0.58
<b>Total</b>	291.9	467027				<b>13.86</b>	0.47
FY 23-24	124.17	198672	0.48	764	366.72	7.29	0.59

20. Learned senior counsel for the Appellant also submitted that the above calculation does not take into account the cost involved in the leachate treatment and ash disposal and the same need to be considered to ensure that reimbursement accurately reflects the actual cost incurred by M/s HIMSW for rendering services under the Concession agreement; and after considering the same it works out as under:

<b>RDF Component of Tipping fee considering proportionate leachate treatment &amp; ash disposal costs of M/s HIMSW</b>											
			A	B	C	D	E=A*B*C F	F=C*650/-	G=D*397.85/-	H=E-F-G	
S.No	Claim Period	Export-Recognized by TSSPDCL (MU)	Qty of RDF Utilized w.r.t export considered by TSSPDCL (MT)	Tipping Fee Paid by GHMC (Rs/ ton of MSW)	Leachate treated from Pit (MT)	Ash disposed to SLF (MT)	RDF component of tipping fee basis CF per GHMC (INR Cr.)	Cost of Leachate Treatment @ 650/- per MT (INR Cr.) incurred by HIMSW	Cost of Ash disposal @397.85/- per MT Cost incurred by HIMSW (INR Cr.)	Net Cost (INR Cr.)	Impact In terms of Rs./kWh
1	20.08.2020 to 31.03.2021	61.58	98,525	685.40	19,705	17,735	2.50	1.28	0.71	0.51	0.08
2	2021-22	109.81	1,75,701	702.10	35,140	31,626	4.32	2.40	1.32	0.60	0.05
3	2022-23	120.51	1,92,801	761.30	38,560	28,920	7.05	2.76	1.27	3.01	0.25
	<b>Total</b>	<b>291.90</b>	<b>4,67,027</b>							<b>4.12</b>	
4	2023-24	124.17	1,98,672	764.0	39,734	29,801	7.29	2.99	1.37	2.92	0.24

21. Learned Senior counsel for the Appellant further submitted that assuming but not admitting any liability whatsoever, any tipping fee reimbursement qua RDF component should not exceed Rs 4.12 Crores for the demand period (20.08.2020 till FY 2022-23) as computed herein above and the reimbursement claim for the RDF component of the tipping fee should be capped at Rs. 0.45/kWh, as this amount represents the incremental difference between the two-part tariff (with variable fuel cost) of Rs. 7.84/kWh and the single-part tariff (without

variable fuel cost) of Rs. 7.39/kWh, as calculated by the State Commission in its tariff order dated 18.04.2020.

22. Per contra, learned counsel for Respondent No. 2 submitted that as per the PPA entered between the them and the Appellant for purchase of power generated from their RDF-based plant, the tariff for the power, to be determined by the State Commission, and as per clause 13.3 of the PPA, any incentive received by the Appellant, such as Tipping Fee shall be passed on to the Discom; the state Commission vide its Tariff order dated 18.04.2020, has directed that the Tipping fee received by the Generator i.e the Appellant under the concession Agreement, shall be reimbursed to the Discom as per terms of PPA dated 19.02.2020. Learned counsel for the Respondent No 2 further submitted that the Appellant is receiving the tipping fee (being the Concessionaire and specific assign) under the concession Agreement dated 21.02.2009 read along with Novation agreement dated 08.04.2019, which it needs to reimburse to the Respondent No 2/ State Discom as per PPA dated 19.02.2020 and Tariff order dated 18.04.2020. The Appellant being a Concessionaire, is receiving double benefit of the Tipping fee from GHMC as well as from Discom as tipping fee being a component of Tariff, which will unjustly enrich the Appellant. Learned counsel for the Respondent No. 2 submitted that, in compliance to the order of this Tribunal dated 24.08.2023, it has sought details from the Appellant, however in the absence of getting requisite details, conversion factor of MSW to RDF and the amount of RDF used in generation of electricity as provided by GHMC has been relied upon for working out the reimbursement of Tipping fee in its demand notice dated 16.01.2024, which worked out as Rs 114.84 Crore for the period

from 20.08.2020 till 31.03.2023 . Learned counsel for Respondent No. 2 submitted the details about the per unit cost of Tipping fee liable to be reimbursed by the Appellant, in compliance to the order of this Tribunal dated 23.08.2024.

23. The grant or refusal of interlocutory relief is covered by three well established principles viz., (1) whether the Appellant has made out a *prima facie* case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if interim relief is not granted than the inconvenience which the opposite party would be put to if it is granted, and (3) whether the Appellant would suffer irreparable injury. With the first condition as a *sine quo non*, at least two conditions should be satisfied by the Appellant conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle them to the grant of interlocutory relief in their favour. (*Nawab Mir Barkat Ali Khan v. Nawab Zulfiquar Jah Bahadur*, AIR 1975 AP 187; *Gone Rajamma v. Chennamaneni Mohan Rao*, (2010) 3 ALD 175; *Kishoresinh Ratansinh Jadeja v. Maruti Corpn*, (2009) 11 SCC 229; *Best Sellers Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd.*, (2012) 6 SCC 792; *State of Mizoram v. Pooja Fortune Private Limited*, 2019 SCC OnLine SC 1741).

24. From the details submitted by the State Discom, in compliance of the order of this Tribunal dated 23.08.2024, as reproduced below, average cost of tipping fee to be reimbursed has been worked out as Rs 3.93 per unit totalling to an amount of Rs 114.81 Crore for demand period (August 2020 to FY 2022-23), which is in line with the demand

notice of the State Discom dated 16.01.2024, stay of which has been sought by Appellant:

Period	Admitted Energy  MU	RDF quantity  MT	Corresponding MSW quantity with conversion factor of 1:2.5 MT	Per MT of Tipping Fee received towards		Tipping Fee to be reimbursed for the admitted energy		Per Unit Tipping Fee	
				Rs/MT		Rs in Cr		Rs/Kwh	
				T&D	C&T	T&D	C&T	T&D	C&T
A	B	C	D	E	F	G	H	I	J
Aug 2020 to March 2021	61.58	98525	246313	685.4	238.54	16.88	5.87	<b>2.74</b>	<b>0.95</b>
FY 2021-22	109.81	175701	439253	702.1	104.44	30.84	4.58	<b>2.80</b>	<b>0.42</b>
FY 2022-23	120.51	192821	482053	761.3	414	36.69	19.95	<b>3.04</b>	<b>1.65</b>
Total	291.9					84.41	30.4	<b>3.93</b>	

It is evident from the above table that reimbursable amount has been worked out considering admitted energy for each year and the tipping fee for T&D and C&T corresponding to MSW quantity with conversion factor of 1:2:5 (RDF: MSW) for the demand period. By the above methodology, the per unit cost of tipping fee to be reimbursed works out to Rs 3.69/unit for FY 2020-21(part), Rs 3.22/unit for FY 2021-22 and Rs 4.69/unit for FY 2022-23.

25. The State commission in the generic tariff order dated 18.04.2020 in O.P No 14 of 2020 regarding determination of Generic Tariff for electricity generated from RDF based power Projects for projects achieving COD from FY 2020-21 to FY 2023-24, which shall apply to

Appellant's project, has considered capital cost of Rs 9 Crore/MW for determination of fixed cost while the recovery of RDF production facilities is inbuilt in RDF cost. The Appellant has claimed total of about Rs 20 Crore /MW. The State Commission has further stated that even if the total capital cost is considered at Rs 20 Crore/ MW , then levelised single-part tariff would be about Rs 7.39/Kwh, while levelised two-part tariff allowed by the State Commission is higher at Rs 7.84/kwh. Thus, it is clear that the variable cost is not only on account of RDF fuel cost and associated works but also encompasses recovery of capital cost deployed by Appellant for RDF production facility. We note from the submissions of the Appellant that normative variable cost allowed as per Tariff order dated 18.04.2020 is Rs 3.24/unit for FY 2020-21, Rs 3.40/ Kwh for FY 2021-22 and Rs 3.51 for FY 2022-23, thus the reimbursement of tipping fee per unit cost of energy, as sought by Respondent No 2 is either more than the variable cost paid by them or almost 95% of variable cost. Further, taking note of the submissions made by Learned Senior Counsel for the Appellant, that adopting the methodology used by State Discom in demand notice, for the current FY 2023-24, would result in having an impact of Rs 7.96/Kwh, which is more than Rs 7.84 /kwh, which the Appellant is receiving as Tariff which, in our view, is not tenable and sustainable and it substantiates the Appellant's submission that considering demand notice they are not only to provide energy free of cost but also to pay back some more.

26. Thus, Appellant has been able to make out a *Prima facie* case and implementation of demand notice, necessitating reimbursement of most of the variable cost for the demand period and going by the contention of Appellant, if same methodology is implemented going

forward then for FY 2023-34, Appellant need to reimburse more than what they receive from the State Discom for the energy sold to them; this in our view is unsustainable and can cause irreparable injury to them and balance of convenience lies in favour of Appellant; thus demand notice dated 16.01.2024 need interference from this Tribunal.

27. In the present Interim order, we would confine ourselves to quantifying the reimbursement of a reasonable amount to be paid by the Appellant to the Respondent No 2/ State Discom in lieu of RDF being used as fuel in generation of electricity, corresponding to tipping fee received by Concessionaire with regard to RDF component. Other issues regarding the *inter se* liability of the Appellant vis-a-vis MISMW, the Concessionaire and the amount of tipping fee liable to be reimbursed to Discom qua Appellant/Concessionaire, shall be dealt with at the time of adjudication of the main appeal. Submissions have been put forth both by Learned Senior counsel for the Appellant as well as learned counsel for the Respondent regarding the quantum of Tipping fee liable to be reimbursed to State Discom.

28. We note from the Article 7 of Concession Agreement dated 21.02.2009 that tipping fee covers three main components as give below:

- i. Primary and secondary collection & transportation of waste upto transfer station: 40% of the Tipping Fee.
- ii. Transfer station management and transportation of waste from transfer station to the processing facilities: 20% of the Tipping Fee.

iii. Treatment & disposal: 40% of the Tipping Fee.

29. The Appellant, without prejudice to their rights and contentions to be raised during adjudication of the main appeal, has submitted details with regard to reimbursement of Tipping fee, with regard to quantity of RDF used for energy generation (as recognised by TSSPDCL) corresponding to Treatment & Disposal (T&D) portion of Tipping Fee. For working out the Interim Arrangement, we find merit in the submission of the Appellant that tipping fee corresponding to RDF component to be used, as it is the only component which goes as fuel in generation of electricity. We also note that after collection and Transportation, waste needs to be segregated into wet and dry waste and treated to be able to be further processed for making of RDF which can be used for generation of electricity. Thus, *prima facie*, we do not find merit in the submission of Respondent No 2 that Tipping fee corresponding to MSW used in making RDF for generation of electricity to be taken. It is also a fact that there is no restriction on the Concessionaire on selling of RDF, and Concessionaire can keep the sale proceeds without any reimbursement of tipping fee to MSW. The issue of reimbursement of tipping fee has arisen in the present case because the Appellant has been paid a variable cost in which fuel cost has been considered, for the energy sold by Appellant to the Respondent No 2/ State Discom and PPA has provision for reimbursement of Tipping fee. Further, the State commission in its tariff order dated 18.04.2020 has considered that ***“benefits of Tipping fee should be passed on to ultimate consumer of electricity otherwise it would amount to double recovery for the same expenses through electricity tariff and Tipping fee”***.

30. The Appellant has not submitted the variable cost incurred by them for generation of electricity, as sought by this Tribunal vide order dated 03.05.2024 for working out Interim arrangement but instead, without prejudice to their rights, offered to reimburse tipping fee corresponding to the RDF component used in generation of electricity, and which after deducting expenditure for Leachet treatment and ash Disposal worked out as Rs 0.05 /kwh to Rs 0.25/Kwh; and same without considering expenditure on Leachet treatment and Ash disposal worked as Rs 0.39/Kwh to Rs 0.58 / Kwh for the demand period. We are of the view that, generally in the fuel cost, cost of transportation of fuel is also considered, so it would be prudent to consider some portion of Tipping fee component for collection & Transportation say 50 % as well as Treatment and Disposal tipping fee corresponding to weight of RDF component used in generation of electricity. With regard to expenditure involved in further process like Leachet treatment and Ash Disposal, which are not part of tipping fee, whether included in the variable cost or not, shall be dealt with during adjudication of the main appeal. As such there is no dispute with regard to amount of energy sold as well as quantity of RDF used in production of energy for the demand period.

31. With above deliberation, we set aside the Demand Notice dated 16.01.2024 and as an interim arrangement, Appellant is directed to make payment to Respondent No 2/ State Discom, in lieu of the RDF used as fuel in generation of electricity, corresponding to tipping fee received by Concessionaire towards T&D portion and 50 % for C&D for the RDF used in generation of electricity, taking conversion factor as

1: 2.5 ( RDF: MSW), as indicated by Respondent No 2. With these parameters, details of payment for the demand period are worked out as under calculated:

Period	Admitted Energy MU	RDF quantity used MT	Per MT of Tipping Fee Rs/MT		Payment in lieu of RDF used corresponding to tipping fee for RDF used in the admitted energy Rs in Cr			For illustration : Per Unit impact Rs/Kwh
			T&D	C&T	T&D	C&T	Total	
A	B	C	D	E	F (Cx D)	G(.5xExC)	H (F+G)	I ( H)*10/B
Aug-20 to Mar-21	61.58	98525	685.4	238.54	2.701	0.470	<b>3.171</b>	0.515
FY 2021-22	109.81	175701	702.1	104.44	4.934	0.367	<b>5.301</b>	0.483
FY 2022-23	120.51	192821	761.3	414	5.872	1.597	<b>7.468</b>	0.620
Total	291.9				13.507	2.434	15.941	

32. Appellant is required to make payment within four weeks of receipt of invoice from Respondent No2/ State Discom as per above. Needless to state that reimbursement made by Appellant to Respondent No2 / State Discom, with this interim arrangement, shall be subject to the outcome of the main appeal.

33. With the above observations, the IA is disposed of. Let the appeal be included in the 'List of Finals', after completion of pleadings, to be taken up from there, in its turn.

**Pronounced in open court on this 13<sup>th</sup> Day of September, 2024**

**(Seema Gupta)**  
**Technical Member (Electricity)**

**(Justice Ramesh Ranganathan)**  
**Chairperson**

**REPORTABLE / NON-REPORTABLE**

*ts/dk/ag*