

**COURT-I**  
**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**IA NO. 384 OF 2019 in APPEAL NO. 295 OF 2017**  
**IA NO. 383 OF 2019 in APPEAL NO. 296 OF 2017**  
**IA NO. 382 OF 2019 in APPEAL NO. 297 OF 2017**  
**IA NO. 381 OF 2019 in APPEAL NO. 298 OF 2017**  
**IA NO. 380 OF 2019 in APPEAL NO. 299 OF 2017**  
**IA NO. 379 OF 2019 in APPEAL NO. 300 OF 2017**  
**IA NO. 385 OF 2019 in APPEAL NO. 301 OF 2017**  
**IA NO. 386 OF 2019 in APPEAL NO. 302 OF 2017**  
**IA NO. 387 OF 2019 in APPEAL NO. 303 OF 2017**  
**IA NO. 388 OF 2019 in APPEAL NO. 304 OF 2017**  
**IA NO. 389 OF 2019 in APPEAL NO. 305 OF 2017**  
**IA NO. 390 OF 2019 in APPEAL NO. 306 OF 2017**

**Dated : 29<sup>th</sup> January , 2020**

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

**In the matter of:**

**Eastern India Powertech Limited**

**.... Appellant(s)**

**Versus**

**Assam Electricity Regulatory Commission & Anr.**  
**Assam Gas Company Ltd.**

**.... Respondent(s)**  
**..... Applicant**

Counsel for the Appellant(s) : Ms. Sonia Nigam  
Ms. Neha Khandelwal  
Mr. Jasvir Singh Sabharwal  
Mr. Pradhyuman Singh

Counsel for the Respondent(s) : Mr. Parinay Deep Shah  
Ms. Mandakini Ghosh  
Ms. Ritika Singhal for R-1

Mr. Avijit Roy  
Mr. N. Deb  
Mr. A. Chaudhury for R-2

Mr. Angshuman Sarma for intervener

**ORDER**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

1. The instant IAs being IA Nos. 384 of 2019 in Appeal No. 295 of 2017, IA No. 383 of 2019 in Appeal No. 296 of 2017, IA No. 382 of 2019 in Appeal No. 297 of 2017, IA No. 381 of 2019 in Appeal No. 298 of 2017, IA No. 380 of 2019 in Appeal No. 299 of 2017, IA No. 379 of 2019 in Appeal No. 300 of 2017, IA NO. 385 of 2019 in Appeal No. 301 of 2017, IA No. 386 of 2019 in Appeal No. 302 of 2017, IA No. 387 of 2019 in Appeal No. 303 of 2017, IA No. 388 of 2019 in Appeal No. 304 of 2017, IA No. 389 of 2019 in Appeal No. 305 of 2017 and IA No. 390 of 2019 in Appeal No. 306 of 2017 have been filed on behalf of the Applicant / Assam Gas Company Limited in respect of the intervention / impleadment.
  
2. The Appellant Eastern India Power Tech Ltd. has filed the above appeals for determination of tariff for the period 2009-2014, inter-alia, on the ground of deemed generation which although has been rejected by the AERC but the order of the State Commission has been challenged before this Tribunal. It is the submission of the

Applicant / Assam Gas Company Limited that if this Tribunal decides the issue of deemed generation in favour of the Appellant, the applicant would seriously be prejudiced as its actual cost towards supply of gas from 2010 till the time the supply of gas was stopped in January 2013, is yet to be paid by the Appellant/EIPTL.

3. The Applicant contends that the issue of deemed generation cannot be decided in absence of Applicant / Assam Gas Company Limited which has supplied gas to the generating company but its dues have been kept outstanding till date. Even if the Appellant stands to gain monetarily out of the proceedings, the dues of the Applicant are required to be adjusted by the Respondent No.2/APDCL and paid to the Applicant. It is contended by the Applicant that despite constant follow up with the Appellant through various communications as well as meeting of all the concerned parties with the Minister of Industries' & Commerce, Power etc., the Appellant till date has not paid a single penny notwithstanding written assurances. However, it has not resulted into any logical conclusion and the fact is that nothing has been paid to the Applicant till date.

4. The Applicant submits that it had not only participated in the public hearing conducted by the State Commission but also provided with several factual inputs relating to the supply of gas to the Appellant. The Applicant has also submitted the relevant portion indicating the participation of the applicant in the public hearing conducted by the Stat Commission. The Applicant has further submitted that Respondent No.2/APDCL has also stated in its reply to the intervention application that presence of the Applicant is necessary for the adjudication of the matter in this Tribunal. Stating above facts, the Applicant has prayed for intervention in the proceedings of the present appeals as under:-

- i. "The Arbitral Tribunal has not decided the claims of the applicant as it has only held that the claims are not arbitrable in view of that fact that the bills raised by the applicant pertain to the period after expiry of the agreement with appellant. Reference may be made to Pg.31 of the reply filed by EIPL/Appellant".*

**Our Consideration:-**

5. While going through the factual matrix of the case presented before us, it transpires that the applicant herein is aggrieved due to fact that despite consuming gas in its power station, the Appellant/ Eastern India Power Tech Limited has not paid the outstanding dues upto

January, 2013 amounting to Rs.25,49,34,247/- excluding the interest payable thereon. We also note that the Arbitral Tribunal has not decided the claims of the applicant as it has only held that the claims are not arbitrable in view of the fact that the bills raised by the Applicant pertain to the period after the expiry of the agreement with the Appellant. In view of these facts, the applicant has requested to allow its intervention / impleadment application so that it remains in close touch of the proceedings and if the Appellant stands to gain monetarily out of the present proceedings, the dues of the applicant could be adjusted by the Respondent No.2/APDCL and paid directly to the applicant.

6. In light of the above, we are of the considered opinion that the instant intervention applications of the Applicant/Assam Gas Company Ltd. deserve to be allowed and hence, allowed.

Pronounced in the Open Court on **29<sup>h</sup> day of January, 2020.**

List the main Appeals for hearing on **02.03.2020.**

**(S.D. Dubey)**  
**Technical Member**

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