# Appellate Tribunal for Electricity
# (Appellate Jurisdiction)

## Appeal No. 01 of 2011

**Dated: 5th January, 2012**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member**
**Hon'ble Mr. Justice P.S. Datta, Judicial Member**

**In the matter of:**
**DPSC Limited**
**Plot X – 1, 2 & 3, Block E P,**
**Sector V,**
**Salt Lake City,**
**Kolkata-700 091 ... Appellant**

**Versus**

**West Bengal Electricity Regulatory Commission,**
**FD-415A, Poura Bhawan,**
**3rd Floor, Sector-III,**
**Bidhannagar,**
**Kolkata-700 106 ... Respondent**

Counsel for the Appellant(s): Dr. Samir Chakraborty,
Mr. Atul Shankar Mathur
Ms. Shruti Verma
Mr. Hasan Murtaza

Counsel for the Respondent(s): Mr. Pratik Dhar &
Mr. C.K. Rai for WBERC

## JUDGMENT

**HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

This Appeal has been filed by the DPSC Limited against the order dated 26.07.2010 passed by the

West Bengal Electricity Regulatory Commission regarding Annual Performance Review for the financial year 2008-09. The State Commission is the respondent.

2. The appellant is engaged in the business of generation and distribution of electricity in Asansol-Raniganj belt of the district of Burdwan in the State of West Bengal.

3. The facts of the case are as under:

3.1. The appellant's tariff for the FY 2008-09 was determined by the State Commission by its order dated 26.09.2008 in terms of its Tariff Regulations of 2007.

3.2. Subsequently, the appellant filed the Annual Performance Review (APR) for the FY 2008-09. In the

APR Petition the appellant had claimed, *inter alia,* inclusion of Interest on Working Capital of Rs. 785.86 lakhs, as against actual interest cost incurred of Rs. 350.64 lakhs. Based on the Regulations 4.6.5.1 and 4.6.5.2 of the Tariff Regulations, 2007, the appellant computed the normative Working Capital on which interest was calculated at Rs. 6631.77 lakhs. The actual weighted average interest rate paid by the appellant of 11.85% being lower than the SBI/PLR rate as on 1.4.2007 of 12.25%, Interest on Working Capital required to be considered in the APR for the year was calculated on the normative Working Capital of Rs. 6631.77 lakhs at 11.85%. However, the State Commission by its order dated 26.07.2010 held that since the actual total interest charged for the year 2008-09 was Rs. 350.64 lakhs as per the appellant's audited account, it was evident that the appellant was not required to borrow to the extent of the allowed normative working capital needs and no interest was payable for the amount not borrowed. Accordingly, the State Commission reduced the allowed interest on Working Capital to Rs. 350.64 lakhs. Aggrieved by the impugned order, the appellant has preferred this appeal.

4. The same issue has been decided by this Tribunal in its judgment dated 6th September, 2011 in appeal No. 137 of 2009 in the matter of DPSC Ltd. vs. West Bengal Electricity Regulatory Commission as under:

> *"8.3. Let us first examine the relevant Regulations.*
>
> *"4.6.5.1 The working capital requirement shall be assessed on normative basis @ 18% on summation of annual fixed charge, fuel cost and power purchase cost reduced by the amount of depreciation, deferred revenue expenditure, return on equity and other non cash expenditures such*

*as, the provision for bad-debt, reserve for unforeseen exigencies, special appropriation against any withheld amount of previous year, arrear on account of adjustment due to Annual Performance Review, FPPCA, etc. of a generating company or a licensee, as the case may be.*

*4.6.5.2 Rate of interest on working capital so assessed on normative basis, shall be equal to the short-term prime lending rate of State Bank of India as on the 1st April of the year preceding the year for which tariff is proposed to be determined or at the actual rate of borrowing whichever is less".*

*The Regulations provide that the working capital will be assessed on normative basis but the interest rate on working capital shall be the short term prime lending rate of SBI as on $1^{st}$ April of the preceding year or the actual rate of borrowing, whichever is less.*

*8.4. This issue has already been decided by this Tribunal in the case of Reliance Infrastructure Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. reported as 2009 ELR (APTEL) 0672. The relevant extracts of the judgment are reproduced below:*

*"11. The Commission has directed that the interest on working capital be treated as efficiency gain and is required to be shared as per Regulation No. 19. The treatment given to the interest on working capital is as under:*

*"**Interest on Working Capital***

*As discussed in the above paragraphs, the actual interest on working capital incurred by REL during FY 2006-07 is nil and the normative interest on working capital approved by the Commission considering other elements of expenses as approved after truing up, works out to Rs.0.60 Crore. As the actual expenditure under this head is* *zero, the Commission has considered the entire normative interest on working capital as efficiency gains and has considered sharing of the same with the distribution licensees in the appropriate ratio, as discussed while sharing efficiency gains due to reduction in R&M expenses.*

*12) It is submitted on behalf of the appellant that when working capital is funded through internal sources of the appellant, the internal funds also carry cost. It is further submitted that such funds employed elsewhere would have carried interest income.*

*13) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on working capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as working capital loses the interest it could have earned by investment* *elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the Commission observed that the REL had actually not incurred any expenditure towards interest on working capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals and the cost of generating such accruals. The cost of such accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on working capital and hence the entire interest on working capital was gain which could be shared as per*

*Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on working capital as per Regulation 19 has merit".*

*In the above judgment the Tribunal has held that the working capital funded through internal sources also carry cost. Such funds employed elsewhere would have carried interest income.*

*8.5. The above issue has also been dealt with in this Tribunal's judgment dated 28.8.2009 in Appeal No. 117 of 2008 in the matter of Reliance Infrastructure Ltd. vs. Maharashtra Electricity Regulatory Commission & Ors. The relevant extract is reproduced below:*

*"15. In Appeal No.111/08, in the matter of Reliance Infrastructure v/s MERC and Ors., this Tribunal has dealt the same issue of full admissibility of the*

*normative interest on Working Capital when the Working Capital has been deployed from the internal accruals. Our decision is set out in the following paras of our judgment dated May 28, 2008 in Appeal No. 111 of 2008.*

> *"7) The Commission observed that in actual fact no amount has been paid towards interest. Therefore, the entire interest on Working Capital granted as pass through in tariff has been treated as efficiency gain. It is true that internal funds also deserve interest in as much as the internal fund when employed as Working Capital loses the interest it could have earned by investment elsewhere. Further the licensee can never have any funds which has no cost. The internal accruals are not like some reserve which does not carry any cost. Internal accruals could have been inter corporate deposits, as suggested on behalf of the appellant. In that case the same would also carry the cost of interest. When the*

*Commission observed that the REL had actually not incurred any expenditure towards interest on Working Capital it should have also considered if the internal accruals had to bear some costs themselves. The Commission could have looked into the source of such internal accruals or funds could be less or more than the normative interest. In arriving at whether there was a gain or loss the Commission was required to take the total picture into consideration which the Commission has not done. It cannot be said that simply because internal accruals were used and there was no outflow of funds by way of interest on Working Capital and hence the entire interest on working capital was gain which could be shared as per Regulation No. 19. Accordingly, the claim of the appellant that it has wrongly been made to share the interest on Working Capital as per Regulation 19 has merit.*

> *15. b): The interest on Working Capital, for the year in question, shall not be treated as efficiency gain.*

*16. In view of our earlier decision on the same issue we allow the appeal in this view of the matter and hold that the entire interest on normative interest rate basis is payable to the appellant".*

*8.6. In view of the above, we direct the State Commission to determine the interest on working capital based on normative working capital according to the Regulation 4.6.5.1 and actual interest rate of borrowing, being less than the short term PLR of SBI, as per the Regulation 4.6.5.2. This issue is, thus, decided in favour of the Appellant".*

5. In view of the above findings of this Tribunal, we decide this issue in favour of the appellant and direct the State Commission to give effect to the above findings of this Tribunal. The appeal is thus allowed and the impugned order is set aside to the extent indicated above. No order as to costs.

6. Pronounced in the open court on this **5th day of January, 2012.**

**(Justice P.S. Datta)**
**Judicial Member**

**( Rakesh Nath)**
**Technical Member**

REPORTABLE / NON-REPORTABLE

vs