

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL No.231 of 2013 & IA No.309 of 2013**

**Dated: 25<sup>th</sup> Sept, 2013**

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,  
CHAIRPERSON  
HON'BLE MR. V.J. TALWAR, TECHNICAL MEMBER**

**In the Matter of:**

- 1. Essar Power(Jharkhand) Limited,  
Prakash Deep Building, 10<sup>th</sup> Floor  
7, Tolstoy Marg, New Delhi-110001**

**...Appellant(s)**

**Versus**

- 1. Noida Power Company Limited  
Commercial Complex,  
H-Block, Alpha-II Sector  
Greater Noida-201308**
- 2. Uttar Pradesh Electricity Regulatory Commission  
Through its Secretary  
II Floor, Kisan Mandi Bhawan,  
Gomti Nagar, Vibhuti Khand, Lucknow-226010**

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

**Counsel for the Appellant(s) : Mr. C.S. Vaidyanathan, Sr.Adv.  
Mr. Tanmaya Mehta  
Mr. Karan Luthra**

**Counsel for the Respondent(s): Mr. M.G. Ramachandran,  
Mr. Vishal Gupta**

**J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. Essar Power(Jharkhand) Limited is the Appellant herein. Noida Power Company Limited is the first Respondent.
2. As against the conditional interim order dated 9.9.2013 passed by the Uttar Pradesh Electricity Regulatory Commission directing the Appellant to submit the returnable assured performance guarantees to the Respondent as per the terms of the PPA, the Appellant has filed this Appeal.
3. The Appellant is a Generating Company. It agreed to supply 240 MW of power to the Noida Power Company Limited(R1), the Respondent under a PPA dated 9.5.2012.
4. In view of the Force Majeure events, the Appellant requested Noida Power Company Limited for an extension of the deadlines as specified in PPA. However, the 1<sup>st</sup> Respondent refused the said request and asked the Appellant to furnish the additional bank guarantees on a weekly basis. Since the said guarantees were not furnished, the Noida Power Company Limited(R-1) issued a termination notice.
5. The Appellant, therefore, approached the Uttar Pradesh State Commission on 26.8.2013 for adjudication of the dispute and sought for the quashing of the termination notice

with incidental prayers. The Appellant also prayed for urgent interim order of status quo during the pendency of the proceedings in the said petition. Since no orders for interim relief were passed by the State Commission, the Appellant approached Allahabad High Court seeking for a suitable direction. Accordingly, the High Court of Allahabad granted status-quo for a period of 10 days and directed the State Commission to pass appropriate orders in the petition filed by the Appellant.

6. In pursuance of the directions of the High Court of Allahabad, the State Commission conducted hearing on 6.9.2013 and passed conditional interim order dated 9.9.2013. In this order, the State Commission directed the Respondent, Noida Power Company Limited to withhold termination notice subject to furnishing of additional bank guarantees by the Appellant. It is, this conditional interim order, is impugned in this Appeal.
7. According to the learned Senior Counsel for the Appellant, the State Commission has failed to appreciate the fact that the requirement of furnishing of additional bank guarantees by the Appellant was itself a disputed question in respect of which, the Appellant was claiming a force majeure exception, which subjects the grant of interim relief to a condition of submission of returnable assured performance

guarantees by the Appellant and therefore conditional interim order is not valid in law.

8. When the matter came up for admission i.e. on 24.9.2013 the learned Counsel for Caveator vehemently opposed the admission of the Appeal on the ground that the interim order was passed by the State Commission during the pendency of impugned proceedings and the said order was in consonance with the conditions of the PPA and therefore, the Appeal can not be entertained while the main proceedings are pending before the State Commission.
9. We have heard the learned Senior Counsel for the Appellant as well as the learned Counsel appearing for the Respondent Caveator.
10. On going through the interim impugned order dated 9.9.2013, it is evident that the State Commission passed an interim order as prayed for by the petitioner/Appellant by directing the Respondent to withhold the termination notice but subject to the condition to furnish the additional bank guarantees.
11. Having not been satisfied with this condition while granting status-quo order in respect of termination notice, the Appellant has filed this Appeal seeking for the status-quo in entirety without any condition. As mentioned above, this prayer has been stoutly opposed by the learned Counsel for

the Respondent contending that main matter has been posted for hearing on 27.9.2013 before the State Commission and all the issues could be directed to be heard and decided by the State Commission on the date of hearing which has been recently posted. He also further contended that the assured performance guarantees to be furnished by the Appellant could be deposited in the State Commission itself and the Respondent would not take any steps for encashing the said assured performance guarantees.

12. On the other hand, the learned Senior Counsel for the Appellant vehemently argued that the State Commission has failed to apply its judicial mind and arrive at prima-facie conclusion regarding the existence of force majeure events and consequently wrong conditional impugned order has been passed by the State Commission.
13. In view of the statement made by the learned Counsel for the Respondent, the assured performance guarantees could be deposited in the State Commission itself by the Appellant, we are not inclined to interfere with the impugned interim order at this stage especially when final hearing has been fixed by the State Commission on 27.9.2013. With regard to the submissions made by both the parties relating to the merits, we make it clear that we are not expressing any opinion.

14. We are of the view that it is for the State Commission to hear the parties and decide the issues raised in this matter and pass the appropriate order in accordance with law.

15. With these observations, this Appeal is disposed of.

**(V.J.Talwar)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated: 25<sup>th</sup> Sept. 2013

✓ ~~REPORTABLE/NON-REPORTABLE~~