Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 162 of 2013
AND
IA NO.148 OF 2014

Dated :26th November, 2014

Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

In the matter of :

INOX Renewables Limited
Having its office at
INOX Towers
17, Sector 16A, Film City,
Noida 201301 (UP)
Through its (Director)
(Successor of Wind Business of
Gujarat Fluorochemicals Limited)

… Appellant(s)

Versus

1. **Central Electricity Regulatory Commission**
   3rd & 4th Floor, Chanderlok Building,
   36, Janpath, New Delhi – 110001.
   Through its Secretary

2. Rajasthan Rajya Vidyut Prasaran Nigam Limited
Vidyut Bhawan, Jyoti Nagar,
Jaipur 302 005,
Through Superintending Engineer (NPP)

…. Respondent(s)

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Vishal Gupta
Mr. Kumar Mihir
Mr. Avinash Menon

Counsel for the Respondent(s): Mr. M.S. Ramalingam for R.1
Mr. Aditya Madan with
Mr. Amitabh Gupta
Mr. S.K. Jain for R-2

JUDGMENT

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

1. INOX Renewables Limited is the Appellant herein. Challenging the Order dated 09.05.2013 holding that the Appellant was indulging in Gaming and directing the Appellant to pay to the Rajasthan Rajya Vidyut Prasaran Nigam Limited,

Respondent No.2, a compensation of Rs. 870 lakhs, the Appellant has filed this Appeal.

2. The brief facts giving rise to the present Appeal are set out hereunder:

i) The Appellant being a Company has procured a wind farm with the installed capacity of 12 MW at Jaisalmer, Rajasthan from Gujarat Fluorochemicals Limited through Agreement dated 30.03.2012. The power generated by the said Generating Station is injected at 132 KV Grid Sub Station (GSS) Jaisalmer through 33 KV Sadia II feeder.

ii) Rajasthan Rajya Vidyut Prasaran Nigam Limited, the Respondent-2, is a State Government enterprise and is a Transmission Company. This Respondent No.2 has also been authorized by the State

Government to operate as the State Load Dispatch Centre.

iii) In an earlier proceeding in Petition No. 60 of 2008 on the Application of Gujarat Fluorochemicals Limited, the predecessor in interest of the Appellant, the Central Commission in its Order, dated 27.08.2008, held that Gujarat Fluorochemicals Limited is eligible for open access. Accordingly, directed the State Load Dispatch Center to issue open access. In terms of the above Order, the Respondent No.2 on 6.10.2008 issued 'No Objection Certificate' for the grant of open access to the Gujarat Fluorochemicals Limited, accordingly, open access had been granted.

iv) Although the open access had been granted, the Transmission Company, Respondent No.2 had filed a Review Petition before the Central Commission

seeking for the Review of the aforesaid Order dated 27.08.2008, on the ground that there were errors apparent on the face of the record. However, after hearing the parties, the Central Commission passed the Order on 03.02.2009 dismissing the Review Petition holding that the said Review Petition was not maintainable.

v) Aggrieved by the said Order, the Respondent No.2, the State Transmission Company filed an Appeal challenging both Orders dated 03.02.2009 and 27.08.2008 before this Tribunal in Appeal No. 66 of 2009 mainly alleging the misuse of the open access granted to the Gujarat Fluorochemicals Limited.

vi) This Tribunal after hearing the parties delivered the Judgment on 03.08.2010 dismissing the said Appeal in Appeal No. 66 of 2009. However, the said

Transmission Company when represented with reference to the subsequent instances of misusing the said open access, this Tribunal gave liberty to the Transmission Company to approach the Central Commission and seek for necessary action by placing the materials to prove its plea. With this liberty the Appeal was disposed of.

vii) Accordingly, the Transmission Company filed a Petition No. 14 of 2011 before the Central Commission making allegation of the misuse of open access and praying for penalizing the Gujarat Fluorochemicals Limited, the predecessor in interest of the Appellant herein for violating the UI Charges Regulations and for resorting to Gaming. This Petition was heard by the Central Commission. The Central Commission during the pendency of the Petition

directed the NRLDC to submit the report with regard to the alleged misuse. Accordingly, the NRLDC submitted its report on 30.06.2011, 08.08.2011 and 14.09.2011. On this report, the predecessor in interest of the Appellant filed its objections. Ultimately, after hearing the parties, the Central Commission passed the impugned Order holding that the Gujarat Fluorochemicals Limited, the predecessor of the Appellant has violated Regulation 7.2 of the UI Regulations and indulged in Gaming. Further, the Central Commission in the impugned Order directed the Gujarat Fluorochemicals Limited, the predecessor of the Appellant to pay to the Respondent No.2 an amount of Rs. 870 lakhs as compensation.

3. The Appellant being aggrieved by the finding and reasonings of the Central Commission in the impugned Order has filed this instant Appeal before this Tribunal.

4. The learned Counsel for the Appellant has made the following submissions while assailing the impugned Order.

(A) The Central Commission has wrongly held that the Appellant has been indulging in Gaming. Gaming has been defined in UI Regulations. Gaming means that an intentional mis-declaration of declared capacity in order to make an undue commercial gain. In the Indian Electricity Grid Code, 2010 also, it has been defined as an intentional mis-declaration in order to make an undue commercial game. Thus, the term Gaming has two ingredients. I) Mis-declaration, which is intentional II) such a mis-declaration is for the purpose of making undue commercial gains through UI charges. In this

case, there is no material to show that the Appellant had intentionally mis-declared the Schedule in order to make commercial gains. Since both the ingredients, namely, intentional mis-declaration as well as the undue commercial gain are not present in the instant case, the Appellant cannot be held that it had indulged in Gaming.

(B) The Central Commission has found the Appellant guilty of Gaming not on the basis of any material but only on the basis of assumptions. The NRLDC had submitted a report stating that the Appellant might have gained Rs. 1048 lakhs extra by selling power through Power Exchange.

(C) The Central Commission also held that the Appellant might have gained extra. This is not on the basis of a positive evidence, much less a proof that the Appellant has made any gains by resorting to

international gaming. Similarly, the ingredient of mis-declaration for the purpose of making undue commercial gains is also absent.

(D) UI Regulations are not applicable in the case of the Appellant. The Appellant had given schedule for short bilateral transactions and trading at power exchange. Therefore, the said UI Regulations were not applicable to it. The Renewable Energy Regulations conferred a Must Run status on wind energy plants and they are not subjected to merit order dispatch. Thus, the Central Commission wrongly observed that since the Appellant is giving regular schedule of injection and is also paying UI a charge for under injection has subjected itself to UI charges. This is not permissible in law. The Regulation and the law cannot be applied to the

Appellant merely on the basis that the Appellant had given schedule, which is akin to the said Regulations.

(E) The Respondent No.2 had not prayed for such compensation. Therefore, such compensation cannot be awarded to the Respondent, who had not claimed it under the residuary prayer made to the Central Commission. Further, the Respondent No.2 did not submit the details of any losses despite request for the same by NRLDC. The grant of compensation in this manner has clearly violated the principles of natural justice whereby the Appellant was not given a proper opportunity to present its case against the grant of compensation to the Respondent No.2.

5. In reply to the above submissions, the learned Counsel for the Respondent has elaborately argued by pointing out the various reasonings given in the impugned Order and

contending that the conclusion arrived at by the Central Commission with regard to the element of Gaming as well as with reference to the Order of compensation, is well justified, and hence, the impugned Order does not call for any interference.

6. In the light of the rival contentions, the following questions would arise for consideration.

a) Whether the Central Commission was correct in holding that the Appellant indulged in gaming despite the fact that there was no evidence to show that the Appellant intentionally mis-declared in order to make undue commercial gains through the Unscheduled Interchange charges?

b) Whether the Central Commission erred in holding that the Appellant being a seller though

not a generating station as defined under the UI Regulations and as such UI Regulations are applicable in the case of the Appellant?

c) Whether the Central Commission is justified in finding the Appellant guilty of gaming only on the basis of assumptions in the absence of any proof to show that the Appellant has made any gain by resorting to any intentional gaming.

d) In the absence of the prayer by the Respondent No.2 with regard to compensation, whether the Central Commission could have asked the Appellant to pay compensation to Respondent no.2, that too when the Respondent No.2 failed to submit details of any losses, despite request for the same by National Load Dispatch Centre?

7. Since the issues are inter related, we will discuss these issues by taking them up together.

8. The crux of the issues involved in the present Appeal is ***"whether there is Gaming on the part of the Gujarat Fluorochemicals Limited as held by the Central Commission in pursuance of report submitted by the NRLDC".***

9. According to the Appellant, the constituents or ingredients to prove the act of Gaming are missing. They are as follows:

a) Mis-declaration by the generating station;

b) Such mis-declaration being intentional; and

c) Such mis-declaration being for the purpose of making undue commercial gain through UI Mechanism.

10. Let us refer to the findings of the Central Commission on this aspect:

"It is the case of the Appellant that these ingredients have not been established in this case, and therefore, the Central Commission could not find the Appellant guilty of Gaming. Before dealing with the issue, let us refer to the findings given by the Central Commission, which is quoted below:

"30. The petitioner has alleged that the Respondent has indulged in gaming by under-injecting the power and should be penalised. The respondent has denied the allegation of gaming on the ground that there was no mis-declaration of schedule. "Gaming" has been defined under sub-clause (ee) of clause (1) of Regulation 2 of the UI Regulations as under:

"(ee) 'gaming' in relation to these regulations, shall mean an intentional in is declaration of declared capacity by any enerating station or seller in order to make an undue commercial gain through Unscheduled Interchange charges."

Thus, the term "gaming" has following two ingredients namely, mis-declaration by the generating station or seller is intentional; and such mis-declaration is for the purpose of making undue commercial gains through UI charges. Therefore, we need to consider whether there was any intentional mis-declaration by the respondent and whether the

respondent has made undue commercial gain through the UI Charges.

31. The Commission directed NRLDC to investigate into the allegations of gaming against the respondent for the period 1.4.2009 till 31.7.2010. NRLDC has submitted reports as directed by the Commission, the gist of which have been discussed in paras 7 to 11 of this order. It is seen from the table at para 7 that the respondent during the period from 1.4.2009 had given schedule for 84328 MWh which ranged from 14% to 92% of the installed capacity with average of 60%. On the other hand, the respondent generated only 39981 MWh during that period which ranged from 13% to 40% of the installed capacity except in July 2010 when it was 81% of the installed capacity with average being only 29% of the installed capacity. Similarly, actual generation was 47% of the schedule whereas deviation was 53% of the schedule. The respondent has attributed this variation to the variable and unpredictable nature of wind generation. We are unable to agree that the variation between the schedule generation and actual generation can be attributed to unpredictability of the wind generation. NRLDC in its report has observed that at times the respondent was unable to generate to meet its bilateral commitments but the respondent was found to sell power at the IEX. NRLDC has further observed that had the respondent done some periodical checks in between and moderated its forecasting of scheduled energy, such large deviations could have been avoided. It is thus clear that the respondent has been giving schedule of generation more than what it is able to generate which

amounts to mis-declaration of schedule. As a result, the total volume of UI for under-injection by the respondent was 51289 MWh from April 2009 to July 2010 which is evident from the table at para 8 of this order. NRLDC has further submitted that the rates for sale of power at IEX were higher than the average UI rates while the rates for sale through bilateral transactions were sometimes higher and sometimes lower than the average UI rates. By apportioning the UI volume between IEX and bilateral, NRLDC has submitted that the respondent might have gained Rs.1048 lakh extra by selling power through IEX as well as bilateral on one hand and carrying out under-injections to the grid on the other hand. 32. It appears from the report of the NRLDC that the petitioner has been giving schedule disproportionate to its actual injection. Since the schedule is prepared by NRLDC for the State as a whole, the export of power from the State is netted against the import of power by the State. In other words, to the extent of under-injection by the respondent, power is reduced from the drawal schedule of the State. In order to meet the difference, the State distribution companies are required to arrange costly power. Though the respondent is paying for the difference between the scheduled injection and the actual injection at the UI rates, that is not sufficient to enable the distribution companies of the State to buy equal quantity of power. On the other hand, as the price at the IEX is higher than the UI and even under bilateral, it is sometimes higher, the respondent is making commercial gains for the power it never injects. The month-wise summary of the UI implication for

Rajasthan due to under injection by respondent as calculated by NRLDC is given at para 11 of this order. NRLDC has found that the total amounts paid by Rajasthan Discoms for procurement of power to meet out the under-injection by respondent are approximately Rs. 3270 lakhs and whereas UI Implications for Rajasthan due to under-injection by Respondent are approximately Rs. 2400 lakhs. Therefore, Rajasthan Discoms have suffered a net loss of Rs.870 lakh on account of the action of the respondent. It therefore conclusively established that the respondent has indulged in gaming by making intentional mis-declaration of its schedule. We therefore direct the respondent to give the injection schedule commensurate with the capacity utilization factor of the wind farm in order to obviate the possibility of under injection of electricity into the grid."

11. In the light of the finding given by the Central Commission in the impugned Order, let us now refer to the definition of Gaming. Gaming has been defined in Sub-Clause (ee) of Clause (1) of Regulation 2 of UI Regulations, which is as follows:

"'gaming' in relation to these regulations, shall mean an intentional mis-declaration of declared capacity by any generating station or seller in order to make an undue commercial gain through Unscheduled interchange charges."

12. The term 'Gaming' has also been defined in the Indian Electricity Grid Code, 2010 which is as under:

> ***"Gaming is an international mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain."***

13. There is no dispute in the fact that the term 'Gaming' would contain two ingredients, namely (1) mis-declaration by the seller is intentional and (2) such mis-declaration is to make undue commercial gains through UI Charges.

14. In this context, it is noticed that the total capacity of wind generating plant of Gujarat Fluorochemicals Limited injecting at 132 KV GSS Jaisalmer (Rajasthan) through 33 KV Sadia II Feeder is 12 MW.

15. It cannot be debated that the wind generator cannot generate at its full capacity continuously. Gujarat Fluorochemicals Limited had got scheduled power up to its full capacity i.e., 12 MW many time continuously, in

consecutive blocks knowing well that this much power would not be available. In this context, Clause No. 26 of the CERC (terms and conditions for tariff determination from renewable energy sources) Regulations 2009 is quite relevant. This provides norms for capacity utilization factor for wind generation, which varies between 20% to 30% based on annual mean wind power density. Gujarat Fluorochemicals Limited had given schedule with capacity utilization factor more than 60% (average) of its installed capacity. This capacity utilization schedule was much in excess of the actual capacity utilization of the Appellant Wind Energy Generators. In fact, it is impossible to get annual Capacity utilization of this magnitude (60%) anywhere in India.

16. This clearly indicates that Gujarat Fluorochemicals Limited had indulged in mis-declaring schedule intentionally. It is also pointed out that during the said period i.e., 01.04.2009

to 31.07.2010, the trend of sale of price of electricity in the open market was mostly on higher side in comparison to applicable UI rate based on frequency.

17. The Appellant had got scheduled generation from their wind power plant up to the maximum generation capacity of 12 MW knowingly by selling power at power exchange at higher rate and paying at UI rate for balance ungenerated power to the Rajasthan Discoms.

18. According to the Respondent, the statement of the Appellant that he has not received any payment towards over injection of power is not correct as the Appellant had paid UI charges of under injection after adjustment of over injected power, which clearly indicates that he has received UI amount for over injected power.

19. According to the Appellant the prices of power exchange cannot be predicted for the next day. The NRLDC in consultation with the NLDC has carried out precise exercise being third party investigation independently as per direction in the order dated 08.06.2011 of the Central Commission by giving direction to produce materials to show that the Appellant has gained by selling up power through the energy exchange or bilateral by under injecting the power in the grid as compared to actually got scheduled.

20. The NRLDC in its report has considered the period from 01.04.2009 to 31.03.2010 for calculating the loss by Rajasthan Distribution Companies based on the under injection made by the Appellants. While working out the deviations, NRLDC has considered block wise details as was furnished by the Respondent No.2 after taking daily

average which has been clearly indicated by the NRLDC in their report.

21. The Appellant had itself agreed during the hearing that it is not possible to predict wind power generation even within the day or in day ahead advance and cannot comply with the UI regulation, which indicate that the Appellant has thoughtfully sold the power under CERC (open access in interstate transmission lines) regulation 2008 as amended up to date for commercial gain by mis-declaring the schedule. The Central Commission has taken into consideration all these aspects while passing the impugned Order in giving finding at Paragraph Nos. 30 to 32. In these paragraphs, the Central Commission while considering the definition of Gaming has also considered the report of NRLDC and gave a finding that the report of the NRLDC that the Transmission Company has been giving the schedule

disproportionate to its actual injection and since the schedule is prepared by NRLDC for the State as a whole is netted against the import of power by the State. It was also observed by the Central Commission that as the price at the Indian Exchange is higher than the UI rate and even under bilateral it is sometimes higher, the Gujarat Fluorochemicals Limited has been making commercial gains for the power it never generated. On the basis of the report, it has been concluded that the Rajasthan Distribution Company has suffered a net loss of Rs. 870 lakh on account of the action of the Appellants. On the basis of the said conclusion, the Central Commission has held that it has been conclusively established that the Gujarat Fluorochemicals Limited has indulged in Gaming by making intentional mis-declaration of schedule. This finding, in our view, on the basis of the interpretation of the various provisions and also on the basis

of the materials found in the NRLDC report would not suffer from infirmity, and as such, we conclude that the finding on this issue is perfectly justified.

22. The next issue raised by the Appellant is that UI Regulations are not applicable to the Appellant since the power was got scheduled for short bilateral transaction and trading on power exchange, and as such, the open access transactions were not covered in the definition of seller at the relevant time in the UI Regulations. On this issue, the Central Commission in the impugned Order had discussed in detail at Paragraph Nos. 23 to 27 , which is as follows:

> *"23. The petitioner has filed this petition alleging that the respondent has violated the limit of under-injection on time block basis as well as on daily aggregate basis as specified in Regulation 7(2) of the UI Regulations. The respondent has submitted that the UI Charges Regulations do not apply in its case since it is neither a generating station nor a seller and therefore, the respondent cannot be penalized for gaming.*

23. We have considered the above submissions of the respondent. As regards the contention of the non-applicability of the UI Regulations in case of the respondent, we need to consider the provisions of the UI Regulations. The objective and scope of the UI Regulations as specified in Regulation 3 and 4 thereof are extracted as under:

> *3. Objective*
>
> *The objective of these regulations is to maintain grid discipline as envisaged under the Grid Code through the commercial mechanism of Unscheduled Interchange Charges by controlling the users of the grid in scheduling, dispatch and drawl of electricity.*
>
> *4. Scope*
>
> *These regulations shall be applicable to –*
>
> > *(i) the generating stations and the beneficiaries, and*
> >
> > *(ii) sellers and buyers involved in the transaction facilitated through short term open access or medium term open access or long-term access in inter-State transmission of electricity."*

24. From Regulation 3 above, it is clear that the objective is to maintain grid discipline through the commercial mechanism of the UI Charges by controlling the "users" of the grid in scheduling, dispatch and drawl of electricity. Therefore, all users of the grid are regulated by the UI Regulations. Regulation 4 provides that these

regulations apply to the generating stations and the beneficiaries on the one hand, and the sellers and buyers involved in the transactions facilitated through short-term open access or medium-term open access or long-term access in inter-State transmission of electricity. The terms "generating station", "beneficiary", "seller" and "buyer" are defined in Regulation 2 as under:

> *"(d) 'beneficiary' means the person purchasing electricity generated from the generating station."*
>
> *"(e) 'buyer' means a person, other than the beneficiary, buying electricity, through a transaction scheduled in accordance with the regulations applicable for short term open access, medium term open access and long term access."*
>
> *"(f) 'generating station' means a generating station whose tariff is determined by the Commission under clause (a) of sub-section (1) of Section 62 of the Act."*
>
> *"(m) 'seller' means a person, other than a generating station, supplying electricity, through a transaction scheduled in accordance with the regulations applicable for short term open access, medium term open access and long term access."*

26. In terms of clause (d), the beneficiary is the person who purchases electricity generated at a generating station, whereas in terms of clause (e), 'generating station' has been defined as a generating station whose tariff is determined by this Commission. It is admitted position that the tariff of the respondent's wind farm is not determined by this Commission, Therefore, the respondent is not a

generating station as defined under the UI Charges Regulations. Similarly, the seller is the person, other than a generating station, who supplies electricity through a transaction scheduled in accordance with the regulations for long term access, medium term open access and short term open access. The term "supply" is defined under sub-section (70) of Section 2 of the Act as "the sale of electricity to a licensee or consumer". Thus, under the UI Regulations, the seller is the person who sells electricity to the licensee or the consumer and avails open access for this purpose. The respondent is supplying electricity by availing short term open access at the power exchange and through bilateral transactions. Therefore, the respondent is a seller under the UI Regulations and accordingly, falls within the scope of these regulations under Regulation 4 thereof.

27. The respondent has submitted that the concept of 'seller' was introduced through amendment dated 28.4.2010. The respondent has argued that even though it is assumed that the respondent is a seller, it cannot be retrospectively applied in case of the respondent since the time period of the alleged gaming by the respondent is from 1.1.2009 till 31.7.2009 and the respondent cannot be penalised for gaming in terms of Regulation 6(6) of the UI Regulations. The contention of the respondent is not correct. The term 'seller' was defined in the UI Regulations (which came into force with effect from 1.4.2009) as under:

"(m) 'seller' means a person, other than a generating station supplying electricity through a transaction scheduled in accordance with the regulations specified by the Commission for open

access, medium term access and long term access;" *Subsequently, the definition was amended vide amendment dated 28.4.2010. The amended definition reads as under:*

"(m) 'seller' means a person, other than a generating station, supplying electricity, through a transaction scheduled in accordance with the regulations applicable for short term open access, medium term open access and long term access;"

It may be seen that in the amended definition, the term 'open access' has been qualified by the words 'short term' for the purpose of clarity. Even without the amendment, the term 'seller' would include the case of the respondent as it is not a generating station in the sense that its tariff is not being determined by the Commission and it sells electricity through bilateral transactions and at the power exchange by availing open access. Therefore, the contention of the petitioner that it is not a seller prior to 26.4.2010 and hence gaming cannot be applied in its case cannot be sustained."

25. As referred to in the impugned Order, the scope of UI Regulations is to maintain grid discipline through commercial mechanism of UI charges by controlling the "users" of grid in scheduling, dispatch and drawl of electricity. In view of the above, all the users of the grid are regulated by the UI

Regulations. Regulation No.4 provides that these regulations would apply not only to the generating stations and beneficiaries but also to the sellers and buyers involved in the transactions. The terms “generating station”, “beneficiary”, “seller” and “buyer” have been defined in Regulation 2. On going through the said Regulation, it is clear that the Appellant is not a generating station as defined under the UI Charges Regulations as its tariff is not determined by the Central Commission. The seller is the person other than the generating station, who supplies electricity through a transaction scheduled in accordance with the regulations. Under the UI Regulations, the seller is the person who sells electricity to the licensee or the consumer and avails open access for this purpose. Therefore, the Appellant could be considered as seller under

the UI Regulations and accordingly falls within the scope of these regulations under Regulation No.4.

26. It may be noticed that in the amended definition, the term "open access" has been qualified with the words 'short term' for the purpose of clarity. Even without the amendment, the term 'seller' would include the Appellant as it is not a generating station in the sense that its tariff is not being determined by the Commission, therefore, the contention that this cannot be applied to the Appellant cannot be sustained.

27. The Appellant has further submitted that the wind power generation has to be considered as a Must Run power plant and cannot be subjected to scheduling and dispatch code as prohibited under Regulation 11 of CERC (terms and conditions for tariff determination from renewable energy sources) Regulation 2009. This Regulation states that the

mast run power plant shall not be subjected to merit order dispatch principles. The State Load Despatch Centre of Rajasthan has never given any instructions for back down of the wind generation of Gujarat Fluorochemicals Limited. In this context the Clause No.3 of the said Regulation which is relevant to be referred to. The same is as follows:

> ***"Scope and extent of application***
>
> ***These regulations shall apply in all cases where tariff, for a generating station or a unit thereof based on renewable sources of energy, is to be determined by the Commission under Section 62 read with Section 79 of the Act.***
>
> ***Provided that in cases of wind, small hydro project, biomass power, non-fossil fuel bases cogeneration projects, solar PV and Solar Thermal power projects, these regulations shall apply subject to the fulfillment of eligibility criteria specified in regulation 4 of these Regulations.***
>
> ***Eligibility Criteria***
>
> ***Wind Power Project located at the wind sites having minimum annual means wind Power Density (WPD) of 200 Watt/m2 measured at hub height of 50 meters and using new wind turbine generators".***

28. However, in this matter, the Appellant has not furnished any material to show that it has got its tariff determined under

this Regulation. Further, the Appellant had on its own, been giving the schedule in order to sell its power in power exchange by availing inter-State Open Access. Therefore, this contention also has no basis.

29. Lastly, it has been contended by the Appellant that the Respondent No.2 had not prayed for any compensation, and even then, the compensation has been awarded to the Respondent No.2, which is not permissible under Law. This contention is not tenable. The prayer has been made by the Respondent in Petition No. 14 of 2011 to penalize the Gujarat Fluorochemicals Limited, the Appellant herein, for violation of UI Regulations, and also prayed for passing such other further Orders as it may deem appropriate in the facts and circumstances of the case. The Central Commission having found that there is violation on the part of the Appellant has decided to grant compensation towards the

loss sustained by the Rajasthan Distribution Companies as recommended by the NRLDC in its report, on account of the amount invested to meet the shortages due to under injection by the Appellant by purchasing the power from other sources which cost more than the UI charges. In fact, as held by the Central Commission the Appellant has actually earned the money even without generation of electricity. The Central Commission while exercising the discretionary power under Regulation 6 (6) had directed the Appellant to pay Respondent No.2 Rs.870 lakhs for the loss suffered by the Respondent No.2, which the Appellant gained due to the mis-declaration of the schedules/under injections. This direction with regard to the award of compensation is under the powers vested with the Central Commission. Therefore, there is no infirmity in the exercise of the powers by the Central Commission for awarding the

compensation, on the basis of the loss incurred by the distribution companies.

30. In view of the above, none of the points urged by the Appellant bear any merits, and consequently the Appeal is liable to be dismissed.

31. SUMMARY OF FINDINGS

(a) The Central Commission has correctly held that the Appellant had indulged in gaming after considering the records placed before it and the investigation Report of the NRLDC.

(b) The Appellant has indulged in intentional mis-declaration of injection schedule to make undue commercial gains through UI charges mechanism. The mis-declaration of generation schedule by the Appellant has caused financial loss to the

Respondent No.2 for which the Central Commission has correctly granted compensation to the Respondent No.2 to be paid by the Appellant on a prayer from the Respondent No.2.

(c) The Appellant falls within the scope of UI Regulation under Regulation 4 as a Seller.

(d) We do not find any infirmity in the Impugned Order passed by the Central Commission.

32. In view of the above, the Appeal is dismissed as 'devoid of any merits'. No order as to costs.

33. Pronounced in the Open Court on this **26th Day of November, 2014.**

(Rakesh Nath) **(Justice M. Karpaga Vinayagam)**
Technical Member **Chairperson**
Dated:26th November, 2014

REPORTABLE/~~NON-REPORTABALE~~