

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

IA No. 55 of 2014 in Appeal no. 35 of 2014
and
IA No. 46 of 2014 in Appeal No. 30 of 2014

Dated : 30th June, 2014

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

IA No. 55 of 2014 in Appeal no. 35 of 2014

In the matter of:

Punjab State Power Corporation Ltd.Appellant(s)
Versus
M/s. Everest Power Pvt. Ltd. & Ors. ...Respondent(s)

**Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh**
**Counsel for the Respondent(s): Mr. Varun Pathak
Mr. Tarun Johri
Mr. Matrugupta Mishra
Ms. Ruth Elwin**

IA No. 46 of 2014 in Appeal No. 30 of 2014

M/s Everest Power Pvt. Ltd. ... Appellant(s)
Versus
Punjab State Electricity Regulatory Commission & Anr.Respondent(s)

Counsel for the Appellant(s) : Mr. Tarun Johri
Counsel for the Respondent(s): Mr. Varun Pathak
Mr. Matrugupta Mishra
Ms. Ruth Elwin
Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Mandakini Ghosh

ORDER

IA no. 55 of 2014 has been filed by the Punjab State Power Corporation Limited (“State Power Corporation”) in Appeal no. 35 of 2014 seeking stay of the impugned order dated 27.11.2013 passed by the Punjab State Electricity Regulatory Commission (“State Commission”) whereby the State Commission has determined the tariff for supply of electricity by Everest Power Private Limited from its 100 MW hydro power plant.

2. IA no. 46 of 2014 has been filed by M/s. Everest Power Private Limited in Appeal no. 30 of 2014 seeking interim relief for payment of transmission charges for using

transmission system of M/s. Allain Duhangan Hydro Power Pvt. Ltd. hereinafter referred to as “Hydro Power - (ADHPL)” for evacuation of power from its power plant and directions to State Power Corporation to pay the power bills at tariff as determined by the State Commission in the impugned order along with the arrears with carrying cost at the interest rates as decided by the State Commission.

3. The contention of the State Power Corporation is that the State Commission has determined the tariff for the Everest Power at a much higher level than is applicable as per Regulations read with the provisions of the Power Purchase Agreement ('PPA') and Power Supply Agreement ('PSA') entered into between the parties. On the other hand, Everest Power has expressed difficulties in making payment of principal amount and interest on loan and the transmission charges to Hydro

Power (ADHPL) for use of their transmission line and want State Power Corporation to make payment as per the impugned order and over and above to pay for the transmission charges claimed by Hydro Power (ADHPL).

4. The short facts of the case are as under:
 - i) On 25.7.2005, Everest Power entered into a PPA with PTC India Ltd., a trader and Respondent no. 2 herein for supply of electricity from the generating station to be set up by it in Himachal Pradesh.
 - ii) Subsequently on 23.3.2006 the Applicant/Appellant entered into PSA with the Respondent no. 2 which included the purchase of electricity at the capped tariff and the other terms as contained in the PPA. The PSA had a provision that the tariff was to be determined by the Appropriate Commission and if the determined tariff was higher than the capped tariff provided in the PPA,

- the capped tariff would apply. However, the difference between the capped tariff and the determined tariff along with interest will be carried forward in the form of tariff credits which could be redeemed in any year when the determined tariff is lower than the capped tariff.
- iii) On 24.1.2007, the State Commission passed an order disposing of the petition filed by the Applicant/Appellant approving the procurement of electricity from the power plant of the Everest Power as per the PSA.
 - iv) The State Commission by order dated 17.8.2012 in a Petition filed by PTC, directed Everest Power and State Power Corporation to get the PSA suitably amended.
 - v) On 3.1.2013, State Power Corporation, PTC and Everest Power signed a tripartite Agreement *inter alia*

- modifying Article 10.1 of the PSA to incorporate that the tariff would be determined by the State Commission.
- vi) On 17.1.2013, the State Commission decided the provisional tariff payable to Everest Power pending the final determination of tariff. On 27.2.2013 an order was passed by the State Commission concluding that the capped tariff would have no application to the present case.
- vii) Thereafter on 27.11.2013, the State Commission disposed of the tariff petition filed by Everest Power determining the tariff applicable for supply of electricity by Everest Power to PSPCL. The State Commission also decided that the capped tariff would not have any application.

5. According to State Power Corporation there was a prima facie case in their favour as the provisional tariff of Rs. 3.58 per unit paid by them as per the interim order of the State Commission is itself excessive and very high compared to the specific approval granted by the State Commission in the order dated 24.1.2007. The order dated 24.1.2007 has become final and binding and if the order dated 24.1.2007 is not enforced, the very approval of the power purchase would be nullified. Therefore, capping should be applicable to the tariff.

6. On the other hand, the case of the M/s. Everest Power is that the parties had entered into a tripartite agreement modifying the Article 10.1 of the PSA wherein the provision for capped tariff was deleted. According to Everest Power, the project is facing grave financial difficulties and the company is unable to meet

even its minimum obligation required for running the project and if certain obligations towards repayment of loan and interest is not fulfilled within a specific period there is a danger of project being classified as sub-standard assets/non-performing asset. In order to avoid being declared a Non-Performing Asset ('NPA') they have to make immediate payment of Rs. 25 crores to the lenders. In addition to that, Everest Power is facing prospect of disconnection by M/s Allain Duhangan Hydro Power Pvt. Ltd. (ADHPL) pursuant to an application moved by ADHPL on 7.1.2014 before the Hon'ble Supreme Court due to non-payment of transmission charges for use of their transmission system for evacuation of power from the power plant of Everest Power.

7. The State Commission has also filed written submissions in support of the impugned order stating

that the cap on tariff shall have no application/relevance and the tariff as determined by the State Commission shall be payable by State Power Corporation to PTC.

8. We have heard Learned Counsel for the parties and have carefully considered their contentions.

9. We find that in the impugned order, the State Commission specifically dealt with the aspect of the capped fixed tariff and has concluded the capped fixed tariff wherever mentioned in the PSA shall have no application whatsoever so far as the PSA dated 23.3.2006 as amended is concerned. We have also seen the tripartite agreement dated 3.1.2013 entered between State Power Corporation, Everest Power and PTC modifying the PSA.

10. We have noticed that the State Commission has determined the tariff according to its Regulations after deciding the capital cost after prudence check and detailed discussions and findings on the various components of the tariff. Hence, we do not find any prima facie case to grant stay of the impugned order of the State Commission. Further the balance of convenience also lies in favour of M/s. Everest Power Private Ltd. who are finding it difficult in making payment to their lenders as also to Hydro Power (ADHPL).

11. As regards payment of transmission charges payable to Hydro Power (ADHPL) sought by M/s. Everest Power Private Ltd., in addition to the tariff determined by the State Commission, we find that the State Commission has given a detailed finding on the transmission charges payable to Everest Power. The State

- Commission has disallowed the transmission charges for use of ADHPL's transmission line. We do not find any prima facie case for giving an interim relief in this regard. Accordingly, we reject the contention of M/s. Everest Power regarding interim order for additional charges on account of transmission charges payable by them to Hydro Power (ADHPL). However, we accept the contention of Everest Power for payment of tariff and arrears as decided by the State Commission in the impugned order in the interim period subject to adjustment on final disposal of the Appeal.
12. Accordingly, we direct State Power Corporation to make payment to M/s. Everest Power according to the impugned order passed by the State Commission. However, we give liberty to State Power Corporation to pay the arrears on account of difference between the amount payable as per the tariff decided by the State Commission by the impugned order and the amount

already paid by State Power Corporation as per the provisional tariff, subject to payment of carrying cost. Thus, it is directed that State Power Corporation shall make the payment of the current bill raised in June 2014 for energy supplied during May 2014 and thereafter as per the tariff decided by the State Commission. State Power Corporation shall pay Rs. 25 crores against the arrears within 15 days of the date of this order and the balance amount of arrears including carrying cost in four equal monthly instalments payable from the end of July 2014 onwards. However, the deferred payment of arrears as above will be subject to carrying cost as per the interest rates determined by the State Commission.

13. This interim order has been passed subject to the outcome of these Appeals.

14. Accordingly, IA no. 55 of 2014 is dismissed and IA no. 46 of 2014 is disposed of in terms of this order. Post both the Appeals for hearing on **15th July, 2014**. In the meantime, pleading be completed.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE

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