

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

I.A. No. 91 of 2014 in Appeal No. 53 of 2014

Dated: 28th March, 2014

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

In the matter of:

**1. BSES Yamuna Power Limited,
Shakti Kiran Building,
Karkardooma,
DELHI-110 032**

**2. BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place,
New Delhi-110 019**

....Appellants

Vs.

**1. Central Electricity Regulatory Commission,
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.**

**2. Aravali Power Company Pvt. Ltd.,
NTPC Bhawan,
Core-7, Scope Complex,
Institutional Area, Lodi Road,
New Delhi.**

**3. Power System Operation Company Limited,
Through Northern Regional Load Despatch Centre,
B-9, Qutrab Institutional Area, Katwaria Sarai,
New Delhi-110 016**

**4. Delhi Transco Limited,
Shakti Sadan,
Kotla Marg,
New Delhi-110 002.**

.... Respondents

Counsel for the Appellant (s): **Mr. Sanjay Sen, Sr. Adv.,**
Mr. Arijit Maitra,
Mr. Dushyant Manocha
Ms. Salmoli Choudhary
Mr. Aashish Gupta

Counsel for the Respondent(s): **Mr. M.G. Ramachandran**
Ms. Swagatika Sahoo,
Ms. Anushree Bardhan
Ms. Poorva Sahegal for R-2
Mr. Arjun Krishnan for R-3
Mr. S.K. Chaturvedi for R-4

O R D E R

Rakesh Nath, Technical Member

IA no. 91 of 2014 has been filed in Appeal no. 53 of 2014 by BSES Yamuna Power Limited and BSES Rajdhani Power Limited seeking stay of the operation of the impugned interim order dated 26.12.2013 passed by Central Electricity Regulatory Commission directing the Appellants to pay the outstanding dues towards capacity charges as also the current capacity charges as per the capacity allocated to them in respect of Jhajjar Thermal Power Project of Aravali Power Company (P) Ltd. pending adjudication of the dispute.

2. We have heard Shri Sanjay Sen, learned Sr. Advocate representing the Appellants and Shri M.G. Ramachandran, learned counsel for Aravali Power Company (P) Ltd.

3. Shri Sanjay Sen, learned Sr. Advocate has made the following submissions:

- a) The Appellants are not in a position to pay the outstanding dues of the Generating Companies due to poor financial position and due to creation of regulatory assets aggregating of about 7000 crores for both the Appellants and leaving huge un-recovered revenue gap by the Delhi Electricity Regulatory Commission without granting carrying cost for the last two financial years which has crippled the cash flows of the Appellants.

- b) The impugned order has been passed hastily without offering opportunity to the Appellants to make submissions on the reasons and materials relied upon by the Central Commission. Thus, the impugned order is violative of principles of natural justice.

- c) The impugned order is directly in conflict with the mandate by the Delhi Electricity Regulatory Commission where the latter has directed the Appellants not to purchase expensive power from plants such as that of Respondent no. 2 which has led to the Appellants to surrender the power from the said generating plants.

- d) Government of Delhi has already requested the Central Government for reallocating the

power supplies from the plant of the Respondent no. 2.

- e) This Tribunal in IA nos. 364 and 365 of 2013 in Appeal nos. 265 & 266 of 2013 respectively has recognized the need to liquidate the regulatory assets and given certain directions to the Delhi Electricity Regulatory Commission. The Appellants are not in a position to make payment to the Respondent no. 2 till Delhi Commission implements the directions given by the Tribunal regarding liquidation of the regulatory assets.

4. Granting of stay of the operation of the impugned order was stoutly opposed by Shri M.G. Ramachandran, learned counsel for Respondent no. 2. He submitted that the Appellant no. 1 has, by its notice dated 20.12.2012 unilaterally

purported to terminate the long-term power purchase agreement entered into between the Appellants and Respondent no. 2. The Appellant no. 1 had entered into the long term Power Purchase Agreement with the Respondent no. 2 for 25 years and had assumed the obligation to pay the capacity charges, energy charges and other charges. Accordingly, the Appellant no. 1 is bound by the terms and conditions agreed to in the PPA. There is no provision in the PPA which entitles such unilateral termination and on the purported ground of termination, namely high rate of power. He further submitted that Jhajjar Power Station was envisaged to meet the power demands of National Capital Territory, along with Haryana and was proposed as a joint venture company of the two beneficiary states namely, Delhi and Haryana along with NTPC Limited. The Appellants, through the

Government of National Capital Territory of Delhi have surrendered the capacity allocated to Delhi by Ministry of Power, Government of India, in part-by-part, on *ad hoc* basis, requesting the Ministry of Power, Government of India to reallocate the capacity to any other interested beneficiaries. The Ministry of Power, Government of India in order to mitigate the situation has been reallocating part of contracted capacity of the Appellants on an *ad hoc* basis from time to time to various beneficiaries. However, notwithstanding the surrender or reallocations, as per the terms and conditions of the PPA and power allocation made by the Ministry of Power, Government of India, the Appellants are liable to pay the capacity charges to the Respondent no. 2 till re-allocation by the Ministry of Power, Government of India to other beneficiaries.

5. We have carefully considered the submissions of both the parties. We find that the impugned order is only an interim order directing the Appellants to pay the arrears of capacity charges and the current capacity charges of the Respondent no. 2 pending adjudication of the dispute. The impugned interim order has been passed after hearing the Appellant and as such the question of violation of principles of natural justice would not arise. We are not inclined to pass any order granting relief to the Appellants against the impugned interim order passed by the Central Commission.

6. We have already passed an order dated 11.3.2014 in IA nos. 364 and 365 of 2013 in Appeal nos. 265 & 266 of 2013 giving some directions to the Delhi Electricity Regulatory Commission regarding

liquidation of the regulatory assets. In the order dated 11th March, 2014 we have also shown the concern as to why the Appellants are not making current payments of the generating and transmission companies when the tariff order dated 31.7.2013 provides for recovery of their full costs for FY 2013-14 along with a surcharge of 8% to cover the carrying cost of the Regulatory Assets.

7. As such, we are not inclined to grant interim relief to the Appellants against payment of dues of the generating company on the ground of their poor financial condition. The Appellants have to pursue the matter with the State Commission for early orders consequent to the directions given by this Tribunal in order dated 11.3.2014. We also direct the Delhi Electricity Regulatory Commission to take immediate

action on our order dated 11.03.2014 in IA nos. 364 and 365 of 2013 in Appeal nos. 265 & 266 of 2013.

8. Since we are not inclined to grant stay of the operation of the impugned interim order, IA no. 91 of 2014 in Appeal no. 53 of 2014 is dismissed, consequently, the Appeal is also dismissed.

9. The Registry is directed to send a copy of this order to the Delhi Electricity Regulatory Commission.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE

vs