In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal No. 120 of 2016 & IA No. 272 of 2016

Dated: 8th May, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of :-

Kamachi Sponge & Power Corporation Ltd.
ABC Trade Centre, 3rd Floor
39 (Old No. 50), Anna Salai
Chennai- 600002

... Appellant

Versus

1. **Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO)**
No. 144, Anna Salai
Chennai- 600002 **...Respondent No.1**

2. **Tamil Nadu Electricity Regulatory Commission (TNERC)**
TIDCO Office Building,
No. 19 A, Rukmani Lakshmipathy Salai,
Marshalls Road, Egmore
Chennai- 600008 **...Respondent No.2**

Counsel for the Appellant(s): **Mr. N L Rajah, Sr. Advocate**
Mr. S Santanam Swaminadhan
Ms. Nishtha Khurana
Mr. Harshal

Counsel for the Respondent(s): Mr. S Vallinayagam for R-1

JUDGMENT

PER HON'BLE MR. I.J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is being filed by M/s Kamachi Sponge & Power Corporation Ltd.(hereinafter referred to as the **"Appellant"**) under Section 111 of the Electricity Act, 2003 challenging the Order dated 23.2.2016 ("**Impugned Order**") passed by the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as the **"State Commission"**),in Petition No. P.P.A.P No. 9 of 2013. The present Appeal is against the Impugned Order on the issue of treating the entire energy pumped by the Appellant during the periods 21.10.2011 to 00.00 hours on 16.11.2011, 00.00 hours on 16.11.2011 to 22.11.2011 and 23.11.2011 to 27.11.2011 and supplied to TANGEDCO **("Respondent No.1")** as unauthorized and denial of payment thereof.

2. The Appellant, M/s Kamachi Sponge & Power Corporation Ltd. is a Grid connected Captive Generating Plant having capacity of 2 x 35 MW (herein referred as 'CGP') in the State of Tamil Nadu.

3. The Respondent No. 1, is Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) is an electrical power generation and distribution public sector undertaking owned by the Government of Tamil Nadu.

4. The Respondent No.2, Tamil Nadu Electricity Regulatory Commission is the State Regulatory Commission of Tamil Nadu,

exercising jurisdiction and discharging functions in terms of the Electricity Act, 2003.

5. Facts of the present Appeal:

a) The Appellant has implemented 2x35 MW grid connected Captive Generating Plant (CGP) connected with 230 kV Sub Station at Gummidipoondi near Chennai in Tamil Nadu. First Unit (35 MW) of the Appellant was synchronised with the grid on 21.10.2011 and was declared under commercial operation w.e.f 00:00 Hrs of 16.11.2011. Tamil Nadu Transmission Corporation Ltd. (TANTRANSCO) vide letter dated 4.10.2011 accorded connectivity to the first unit of the Appellant to the grid with certain terms and conditions. TANTRANSCO vide letter dated 18.11.2011 accorded approval to the Appellant for Short Term Open Access and wheeling for third party sale of the power.

b) The Second Unit (35 MW) of the Appellant was synchronised with the grid on 27.1.2012 and was declared under commercial operation w.e.f. 30.1.2012. TANTRANSCO accorded connectivity of second unit of the Appellant with the grid vide letter dated 28.11.2011 with certain terms and conditions. TANTRANSCO vide letter dated 4.2.2012 increased the open access quantum.

c) The Appellant vide letter dated 7.10.2011 requested Respondent No. 1 for purchase of infirm power from its CGP. Respondent No. 1 vide its letter dated 21.10.2011 requested for certain details in response to the Appellant's letter dated 7.10.2011. The details were furnished by the Appellant vide its letter dated 5.11.2011.

d) The State Commission's Order No. 4 dated 15.5.2006 (herein after referred as 'CGP Order'), regarding power purchase by Respondent No.1 and allied issues in respect of fossil fuel based Group Captive Generating Plants and fossil fuel based Cogeneration plants is applicable to the Appellant. This order sets out various terms and conditions of power purchase by distribution licensee from the CGPs.

e) The Appellant claimed payment of following infirm energy pumped into the grid from the Respondent No.1.

Sl No.	Period	Energy claimed to have been pumped
(a)	21-10-2011 to 00.00 hrs. on 16-11-2011	11,60,707 units.
(b)	00.00 hrs. on 16-11-2011 (COD Date) to 22-11-2011	7,77,826 units
(c)	23-11-2011 to 27-11-2011	3,64,475 units

The Respondent No. 1 vide its various communications denied the payment terming that the energy pumped into the grid is unauthorised and illegal and suggested the Appellant to seek remedy in accordance with law.

f) Accordingly, the Appellant filed Petition No. P.P.A.P No. 9 before the State Commission. The State Commission vide Impugned Order dated 23.2.2016 dismissed the Petition holding that entire energy pumped by the Appellant during the periods 21.10.2011 to 00.00 hours on 16.11.2011, 00.00 hours on 16.11.2011 to 22.11.2011 and

23.11.2011 to 27.11.2011 as unauthorized and denied the payment thereof.

g) Aggrieved by the Impugned Order passed by the State Commission, the Appellant has preferred the present appeal.

6. QUESTIONS OF LAW

The Appellant has raised the following questions of law in the present appeal:

a. Whether after having accepted as many as 23,03,008 (Twenty three lakh three thousand and eight only) units of energy without demur and after gainfully utilising the same over a period of 30 days, was the Respondent right in no making any payment for the power utilised?

b. Whether the first Respondent does not have any responsibility of regulation of inflow into the grid from all the suppliers as in the present case energy was supplied with the full knowledge of the First Respondent for more than 30 days?

c. Whether it would be valid ground to deny justice to the Appellant just because a few more similarly placed cases are pending and they may also make a claim?

d. Whether by application of principle of unjust enrichment as also the principle of fair dealing the Appellant is not entitled to receive appropriate payments?

e. Whether the claim of the Appellant and other similarly placed persons can be termed as erroneous and illegal, when in fact the first Respondent have recovered full tariff from the end consumers and also subsidy from the Government for the energy supplied by the Appellant?

f. Whether the first Respondent is not playing the role of a trustee for the Appellant's income while collecting tariff for energy pumped in by the Appellant?

g. Whether it would be valid ground to pass the orders on theoretical ground that pumping in electricity without a schedule it would impact the safe and economic operation, while there was no such impact in this instant case nor has the same been pleaded?

h. Whether the statement of the first Respondent is sustainable, when they accept that the connectivity to the grid is established, energy supply is received and accepted and further sold to end customers and huge profitable income is generated, however the Respondent is not agreeable to share a minimum amount from the income generated from the energy supplied by the Appellant and in turn categorises the energy as illegal supply?

i. Whether it is correct on the part of the Second Respondent not to accept the contention of the Appellant that in a similar case in Appeal No. 170 of 2012 between M/s Reliance Infrastructure Limited and Bangalore Electricity

Supply Company the Hon'ble Aptel has approved payment for energy pumped without agreement?

j. Whether the Second Respondent was right in distinguishing the case of Appellant from that of the case decided by this Hon'ble Tribunal in Appeal No. 170 of 2012 between M/s Reliance Infrastructure Limited and Bangalore Electricity Supply Company when in fact there were no differences in principles to be applied?

k. Whether the Second Respondent was right in holding that the decision rendered by the Hon'ble Tribunal in Appeal No. 170 of 2012 was not applicable to the Appellant's case is a sustainable finding?

7. We have heard at length the learned counsel for the parties and considered carefully their written submissions, arguments put forth during the hearings etc. Gist of the same is discussed hereunder.

8. The learned senior counsel for the Appellant has made following arguments/submissions for our consideration on the issues raised by it:

a) The Impugned Order passed by the State Commission is in violation of natural principle of justice. It failed to consider that the Appellant was granted connectivity and the Respondent No. 1 had knowingly accepted the power pumped into the grid during the period under dispute by the Appellant.

b) The Respondent No. 1 had utilised the pumped energy gainfully & has made profit out of it and subsequently terming the same unauthorised and illegal. The Respondent No. 1 has also contended that if the contentions of the Appellant are accepted then they will have to accept nine more similar claims.

c) The State Commission failed to consider that the judgement of this Tribunal in Appeal No. 170 of 2012 is very much applicable in the instant case. The State Commission rejected it on wrong grounds stating that the coal based plants are different from the wind mill.

d) The State Commission also failed to notice that vide letter dated 7.10.2011 the Appellant informed the Respondent No.1 that they can reach full load of capacity and can declare COD by 31.10.2011. The Respondent No. 1 has also replied to this letter vide their letter dated 21.10.2011. Hence, the Respondent No. 1 was fully aware of the pumping of power in the grid by the Appellant. Accordingly, this Tribunal's judgement in Appeal No. 170 of 2012 is applicable and the judgement of this Tribunal in Appeal No. 123 of 2010 is not applicable.

e) The State Commission also failed to understand that there was no impact on safe and economic operation in the instant case. The State Commission also failed to categorise the claim of the Appellant. The Appellant had requested the Respondent No. 1 to purchase the surplus power pumped into grid at infirm power rate which has been dealt in CGP Order of the State Commission. This order also specifies the infirm rate. The Appellant inadvertently interpreted the requirement of reaching full load capacity before

declaration of COD which is actually applicable to SPV and IPP units and not on CGP's. The Appellant could have declared COD at an earlier date without even pumping surplus power to the grid.

f) The State Commission on various earlier occasions has held that the infirm power generated till COD has to be absorbed by the licensee and payment is to made under UI mechanism.

9. The learned counsel for the Respondent No. 1 made following arguments / submissions on the issues raised in the present Appeal for our consideration:

a) The approval of grid connectivity by TANTRANCO vide letter dated 4.10.2011 was subject to certain important conditions such as the approval is only for grid connectivity only and the Appellant shall not inject any power into the grid and any excess energy pumped into the grid without valid agreement and open access approval will not be accounted for payment. The grid connectivity agreement was also signed by the Appellant on 4.10.2011 incorporating these terms and conditions.

b) In response to Appellant's letter dated 7.10.2011, the Respondent No. 1 vide letter dated 21.10.2011 requested for further details to consider its request of sale of infirm power. Appellant vide letter dated 5.11.2011 provided the details and also informed that the first unit was synchronised on 21.10.2011 and probable date of COD as 20.11.2011. The Appellant also kept on changing the quantity of surplus power available in its various communications.

c) The Appellant declared COD of its first unit on 16.11.2011 before the Respondent No.1 could ascertain the details regarding purchase of infirm power and before fixation of tariff for the same by the State Commission. The Respondent No. 1 vide its letter dated 3.12.2011 informed that since the Appellant has achieved COD before entering into the contractual agreement, therefore there is no question of entertaining the energy pumped as infirm power to the Respondent No.1.

d) The Appellant subsequently changed the stance and informed the Respondent No. 1 that it was supplying firm power as per CGP Order of the State Commission. The Respondent No. 1 rejected the claim of the Appellant and termed the pumped energy as unauthorised vide its letter dated 23.1.2012. As per the CGP order, the sale is subject to approval of the licensee and entering into Energy Purchase Agreement (EPA) between parties. As per this order, the rates notified by the State Commission are not applicable for purchase of infirm power during the period of trial run of the generator.

e) The Appellant has violated the conditions in the approval of the grid connectivity issued in pursuance to Tamil Nadu Grid Code. The Appellant injected energy without approval of Respondent No.1 and SLDC clearance. Pumping energy without any contract and scheduling is violation of the grid code.

f) The approval of open access dated 18.11.2011 also clearly mentions that generation over and above committed power by the Appellant will not be accounted for. The open access could be

availed by the Appellant only from 23.11.2011 and that too for 6.99 MW against approved open access of 10.868 MW. Surplus energy pumped from 21.10.2011 to 27.11.2011 is unauthorised and illegal. The Respondent No.1 is not responsible for payment of any kind of energy injected in to the grid without any contract/ agreement and without scheduling.

g) This Tribunal's judgement in Appeal No. 170 of 2012 is not applicable to the instant case but the judgement in Appeal No. 123 of 2010 is applicable as it is clearly distinguishable, compared with circumstances of both the cases. This Tribunal in the judgments in Appeal Nos. 267 of 2014 and 68 of 2014 also held that energy pumped into the grid without consent/agreement and schedule, need not be compensated.

10. After having a careful examination of all the aspects brought before us on the issues raised in Appeal and submissions made by the Appellant and the Respondents for our consideration, our observations are as follows:-

a. The present case pertains to the decision of the State Commission vide its Impugned Order regarding treating the entire energy pumped by the Appellant during the periods 21.10.2011 to 00.00 hours on 16.11.2011, 00.00 hours on 16.11.2011 to 22.11.2011 and 23.11.2011 to 27.11.2011 till meter reading as unauthorized and denial of payment thereof.

b. On Question No. 6 (a) i.e. Whether after having accepted as many as 23,03,008 (Twenty three lakh three thousand and eight

only) units of energy without demur and after gainfully utilising the same over a period of 30 days, was the Respondent right in not making any payment for the power utilised?, we observe as follows:

i. The break-up of energy pumped into the grid by the Appellant during the period under dispute is as below:

Sl No.	Period	Energy claimed to have been pumped
(a)	21-10-2011 to 00.00 hrs. on 16-11-2011	11,60,707 units.
(b)	00.00 hrs. on 16-11-2011 (COD Date) to 22-11-2011	7,77,826 units
(c)	23-11-2011 to 27-11-2011	3,64,475 units

The energy at Sl. No. (a) above is infirm power from synchronisation to COD of first unit of the Appellant. At Sl. No. (b) above is the surplus energy pertains to period from COD till availing of short term open access by the Appellant and at Sl. No. (c) is the surplus energy pertains to the period from availing of short term open access till the meter reading taken by official of Respondent No.1 after meeting the requisite condition of becoming short term open access consumer.

ii. The grid connectivity granted to the Appellant by TANTRANCO clearly spells out terms and conditions for connectivity. S.No. 23 and 25 of the said approval are reproduced below:

"……

…….

23. This approval is for grid connectivity of 1x 35 MW generator alone, the company shall not inject any power into the grid.

…….

25. Any excess energy pumped into grid without valid contractual agreement and open access will not be accounted for payment.

……”

The short term open access granted to the Appellant by TANTRANCO vide letter dated 18.11.2011 clearly spells out terms and conditions for open access. S.No. 10 and 18 of the said grant are reproduced below:

“.....

.....

10. The generation over and above the committed power by M/s kamachi Sponge & Power Corporation Ltd. will not be accounted.....

.....

18. If the HT consumer does not draw the committed power, the generator will not be compensated by TANGEDCO.”

The energy pumped by the Appellant on all the three occasions as indicated above is clear violation of the above terms and conditions of the connectivity/ open access granted by TANTRANSCO as there was no contractual agreement with the Respondent No.1 and there is also no provision for accounting of injection of excess energy during the period under dispute by Appellant as per connectivity and open access grant by TANTRANSCO.

iii. The relevant provisions of CGP Order are reproduced below:

"……

……

The intention of this order is to enable the CGP holder to sell his surplus power to the Distribution Licensee. The surplus in CGP can be categorised as

(a) Surplus a priori which is the maximum firm commitment (referred as firm supply in the policies / guidelines etc.,), a CGP holder can offer at the best.

(b) Surplus resulting from reduced captive usage due to various factors such as factory closure, reduction in production level etc.,, which is dynamic and an infirm offer (referred as infirm supply).

Accordingly, whenever the order refers to scheduling / commitment, with respect to the transactions of CGP and Licensee, it pertains to the firm / infirm supply and should not be confused with firm power / infirm power definitions."

The Appellant was also not clear between the terms firm supply and infirm supply vis a vis firm power and infirm power which the CGP Order clearly distinguished as above. Therefore the argument of the Appellant of injection of infirm power to the grid as per CERC/ TNERC Tariff Regulations is not sustainable.

Further, the CGP Order also clearly spells out the requirement of energy purchase agreement as below:

"(*f) Energy Purchase Agreement (EPA)*

The CGP Holder shall sign an EPA with Distribution Licensee or Third Party consumers for sale of power of minimum 1MW (i.e. equivalent to 700 units per hour). The above criterion shall be applicable for "Firm" as well as "Infirm" power. Any power injected into the grid for the purpose of selling to the Distribution Licensee or the Third Party which is less than 1 MW shall not be considered while billing by the Distribution Licensee.

It is not intended that the Commission would approve EPA for each CGP Holder individually. Distribution Licensees shall draft EPA taking cognizance of the Tariff provisions and EPA-related principles elaborated in this Order.

A short tenure such as 1 year for Firm power purchase agreement considered to be inadequate for CGPs to provide investment / financial related details to the lending agencies / institutions while seeking financial assistance. Therefore, the Distribution Licensee should sign an EPA for a minimum of 3-years and a maximum period of 5-years, with the CGP Holders, for both 'Firm' as well as 'Infirm' power purchase from CGP."

It means that any sort of energy (Firm/Infirm) is to purchased by a Distribution Licensee by entering into EPA and that too for a longer duration of time at the rates specified in the CGP Order. It means that there was a clear requirement of contractual agreement between Appellant and Respondent No. 1 for sale/purchase of any power for shorter duration from the CGP at the tariff approved by the State Commission. The Appellant should have taken appropriate steps to deal with the situation at an appropriate time.

Ignorance of the provisions of the appropriate regulations does not absolve the Appellant from its wrong doing.

From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1, it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No. 1 and without the knowledge/ schedule from SLDC. The energy pumped into the grid during the period under dispute by the Appellant is unauthorised and does not call for any payment by the Respondent No.1.

iv. This issue is decided against the Appellant.

c. On Question No. 6 (b) i.e. Whether the first Respondent does not have any responsibility of regulation of inflow into the grid from all the suppliers as in the present case energy was supplied with the full knowledge of the First Respondent for more than 30 days?, we decide as below:

i. The sequence of events and the communications exchanged between the Appellant and the Respondent No.1 clearly establishes that the power was pumped by the Appellant from 21.10.2011 (synchronisation date of first unit of the Appellant) for which for the first time, information of such injection was received by the Respondent No. 1 only on 8.11.2011 vide Appellant's letter dated 5.11.2011 that too in response to the queries raised by the Respondent No.1. Here we would like to mention that each entity created under the Electricity Act, 2003 has a clear defined role. In

this case the responsibility of regulation of power inflow into the grid from all suppliers lies with SLDC in accordance with Section 32 of the Electricity Act, 2003, based on the contractual agreements entered by the distribution licensee with power generators/suppliers through a well established system of scheduling. It is the duty of everyone connected with the operation of the power system to comply with the directions of the SLDC in its control area. In the instant case, the Appellant has not sought any approval/ schedule from SLDC before synchronisation for pumping any power into the grid. Even the SLDC was not aware of the power pumped during this period by the Appellant into the grid. Hence, the onus of the wrong doing by the Appellant cannot be shifted to the Respondent No. 1.

ii. Accordingly, this issue is decided against the Appellant.

d. On Question No. 6 (c) i.e. Whether it would be valid ground to deny justice to the Appellant just because a few more similarly placed cases are pending and they may also make a claim?, we decide as below:

i. The denial of the claim of the Appellant by the State Commission vide its Impugned Order is not based on the question that similarly placed cases will also claim payments based on the decision of the Impugned Order. The State Commission's Impugned Order is very well reasoned and does not refer to any such case in its analysis and decision. The Appellant has also not placed any factual details related to such cases before this Tribunal. The Respondent No. 1

had also denied regarding such type of cases. Thus this question of the Appellant is misplaced.

iii. Accordingly, this issue is decided against the Appellant.

e. On Question No. 6 (d) i.e. Whether by application of principle of unjust enrichment as also the principle of fair dealing the Appellant is not entitled to receive appropriate payments?, and On Question No. 6 (e) i.e. Whether the claim of the Appellant and other similarly placed persons can be termed as erroneous and illegal, when in fact the first Respondent have recovered full tariff from the end consumers and also subsidy from the Government for the energy supplied by the Appellant?, we decide as below:

i. In view of our discussions and decision at para 10 b. above that the Respondent No. 1 is not liable to make any payment for unauthorised injection of power into the grid by the Appellant, the above questions are of no consequence.

ii. Accordingly, this issue is also decided against the Appellant.

f. On Question No. 6 (f) i.e. Whether the first Respondent is not playing the role of a trustee for the Appellant's income while collecting tariff for energy pumped in by the Appellant?, we decide as below:

i. As decided at 10 b. above that no payments are liable to be received by the Appellant, then the question of Respondent No.1 playing the role of trustee for Appellant's income does not arise.

ii. This issue is decided against the Appellant.

g. On Question No. 6 (g) i.e. Whether it would be valid ground to pass the orders on theoretical ground that pumping in electricity without a schedule it would impact the safe and economic operation, while there was no such impact in this instant case nor has the same been pleaded?, we decide as below:

i. The safe and economic operation of the grid is of utmost importance. In this regard, many regulations, rules and procedures have been made by the Central/State Regulator(s). Maintenance of the grid discipline is the responsibility of all the stakeholders. The Appellant has pumped power into the grid without knowledge/ obtaining prior approval of the SLDC and without any valid agreement/ contract with the Respondent No.1. If every generator starts injecting power into the grid without prior approval of the grid operators/ LDCs and without valid contractual agreements this may jeopardise secure grid operations and may lead to catastrophe. The action of the Appellant is not justified and moreover pleading that there was no such impact in the instant case is misplaced.

ii. This issue is decided against the Appellant.

h. On Question No. 6 (h) i.e. Whether the statement of the first Respondent is sustainable, when they accept that the

connectivity to the grid is established, energy supply is received and accepted and further sold to end customers and huge profitable income is generated, however the Respondent is not agreeable to share a minimum amount from the income generated from the energy supplied by the Appellant and in turn categorises the energy as illegal supply?, we decide as below:

i. Based on the facts and circumstances of the case as discussed in the preceding paragraphs, the Appellant is not entitled to any payments of its unauthorised action of pumping of electricity to the grid during the period under dispute and hence this issue is also decided against the Appellant.

l. On Question No. 6 (i) i.e. Whether it is correct on the part of the Second Respondent not to accept the contention of the Appellant that in a similar case in Appeal No. 170 of 2012 between M/s Reliance Infrastructure Limited and Bangalore Electricity Supply Company the Hon'ble Aptel has approved payment for energy pumped without agreement?, On Question No. 6 (j) i.e. Whether the Second Respondent was right in distinguishing the case of Appellant from that of the case decided by this Hon'ble Tribunal in Appeal No. 170 of 2012 between M/s Reliance Infrastructure Limited and Bangalore Electricity Supply Company when in fact there were no differences in principles to be applied? And on Question No. 6 (k) i.e. Whether the Second Respondent was right in holding that

the decision rendered by the Hon'ble Tribunal in Appeal No. 170 of 2012 was not applicable to the Appellant's case is a sustainable finding?, we decide as below:

i. The State Commission in the Impugned Order has held that the judgement dated 16.5.2011 of this Tribunal in appeal No. 123 of 2010 (M/s Indo Rama Synthetics (I) Ltd. Vs. Maharashtra State Regulatory Commission) is applicable to this case and the judgement dated 24.1.2013 of this Tribunal in appeal No. 170 of 2012 (M/s Bangalore Electricity Supply Company Ltd. (BESCOM) Vs. M/s Reliance Infrastructure Ltd.) is not applicable in this case as the facts of the Appellant's case are different. The applicability of judgement in Appeal No. 123 of 2010 is also dealt in detail by this Tribunal in Appeal no. 170 of 2012 and held that both cases are distinct in their facts and circumstances.

ii. In the judgment of this Tribunal in Appeal no. 123 of 2010 case, the generator was pumping power during off peak hours and the electricity generated was too expensive from oil based power plant and therefore, it could have been regulated by reducing generation when the power is not required. The Generator did not have any PPA either during the disputed period or prior to that with the Distribution Licensee as it was earlier supplying power to third party outside the State through a Trading Licensee. The Distribution Licensee as well as SLDC had no knowledge of injection of power by the Generator.

In view of the above and similar facts and circumstances, we are also of the considered opinion that judgement of this Tribunal in appeal no. 123 of 2010 is applicable to the instant case.

iii. In the judgment of this Tribunal in appeal no. 170 of 2012, the Wheeling and Banking Agreement between the KPTCL/SLDC and Reliance Infrastructure was signed on 14.10.2009. The KPTCL/SLDC issued no objection certificate for execution of Wheeling and Banking Agreement on 22.8.2009 itself i.e. prior to the expiry of the PPA (i.e. on 29.9.2009). The agreement which was executed between the Reliance Infrastructure and KPTCL on 14.10.2009 was to be construed to be a tripartite agreement which was signed by BESCOM later. Before the expiry of the PPA i.e. on 29.9.2009, inprinciple approval for Wheeling and Banking of energy was already given by the BESCOM on 17.9.2009 subject to entering into a tripartite agreement.

In view of the above, the judgement of this Tribunal in appeal no. 170 of 2012 is not applicable to the instant case as the facts and circumstances are different as brought out above.

iv. The Respondent No. 1 had also quoted two more judgements of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgement dated 15.4.2015 in appeal no. 267 of 2014 this Tribunal has held that the Appellant (M/s Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned

in the judgement till TANGEDCO conveyed its consent to purchase infirm power. In the judgement dated 30.5.2016 in appeal no. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.

v. Accordingly, this issue is also decided against the Appellant.

ORDER

We are of the considered opinion that the issues raised in the present appeal and IA have no merit as discussed above. The Appeal and I.A. are hereby dismissed.

The Impugned Order passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **8th day of May, 2017.**

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

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REPORTABLE/NON-REPORTABLE

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