

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

**IA No. 348 of 2013 in
Appeal no. 261 of 2013**

Dated: 11th December, 2013

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

In the matter of

**Maharashtra Electricity Distribution
Co. Ltd.
Polt no. G-9, Prakashgad,
Bandra (E)
Prof. Anant Kanekar Marg
Mumbai – 400 051**

... Appellant(s)

Versus

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

... Respondents

**2. Ratnagiri Gas and Power Pvt. Ltd.
2nd Floor, Block No. 2
IGL Complex, Plot No. 2B
Sector 126, Expressway
Noida – 210 304, U.P.**

3. **Electricity Department
Through its Secretary,
Govt. of Goa, Panaji**
4. **Electricity Department
Through its Secretary,
Administration of Daman & Diu,
Daman**
5. **Electricity Department
Through its Secretary,
Administration of
Dardar & Nagar Haveli**

Counsel for the Appellant(s):

**Mr. Shanti Bhushan
Mr. Atul Nanda
Ms. Puja Priyadarshini
Mr. Kartik Seth
Mr. Parinay
Mr. Ravi Prakash**

Counsel for the Respondent(s):

**Mr. M.G. Ramachandran
Ms. Swagatika Sahoo
Mr. Avinash Menon
Ms. Anushree Bardhan
for R.2**

ORDER

IA No. 348 of 2013 in Appeal no. 261 of 2013 has been filed by Maharashtra State Electricity Distribution Co. Ltd., the Appellant for stay of the impugned order dated 30.7.2013 passed by the Central Electricity Regulatory Commission (“Central Commission”) allowing the petition filed by Ratnagiri Gas Power Pvt. Ltd., the Respondent for declaration of capacity based on RLNG for computation of availability of generating stations for recovery of the fixed charges payable by the Appellant.

2. The Appellant is a distribution licensee. The Central Commission is the Respondent no. 1. Ratnagiri Gas Power Pvt. Ltd., a generating company operating a gas based power station is the Respondent no. 2.
3. According to the Appellant, the Central Commission has not interpreted the provisions of the Power Purchase

Agreement (“PPA”) correctly. According to Clause 5.9 of the PPA, the Respondent generating company is required to obtain approval of the Appellant for contracting terms and prices before entering into the Gas Supply Agreement/Gas Transportation Agreement. In the absence of such approval from the Appellant, the Respondent generating company cannot enter into any Gas Supply Agreement/Gas Transportation Agreement and claim plant availability based on such supply and transportation contract. As a result of the impugned order, the Appellant has been saddled with liability of payment of fixed charges of the gas based power plant of the Respondent no.1 even without the Appellant scheduling power from the power plant with use of RLNG.

4. On the other hand the contention of the Respondent no.2 is that the Central Commission has correctly interpreted the Clauses of the PPA. Further the Gas Supply/Transportation

Gas Agreements entered into by them are on take and pay basis and not take or pay basis and in the event the Respondent no. 2 does not actually take delivery of RLNG there is no obligation to pay any charges. If and when the Appellant requires electricity through the use of RLNG and the Appellant accepts the terms and conditions contained in the contract entered into between the Respondent no.2 and the gas supplier, there could be generation and supply of electricity by Respondent no. 2 to the Appellant. Only when the Appellant draws energy generated from RLNG then it has to pay the energy charges for the same.

5. We have heard Shri Shanti Bhushan, Learned Senior Counsel for the Appellant and Shri M.G. Ramachandran, Learned Counsel for the Respondent no. 2. They have also filed written submissions.

6. Having heard the elaborate arguments made by both parties, we do not find that there is a prima facie case to grant stay of operation of the impugned order. RLNG is a primary fuel for generation of electricity at the Ratnagiri project. It is clear that there is no take or pay liability on the Appellant on account of the Agreement entered into by the Respondent no.2 with the gas supplier. The balance of convenience also lies in favour of the Respondent no. 2. If the capacity charges are not paid to them when their plant is ready for generation on RLNG, it may not be able to service its debt obligation and meet the operation and maintenances expenses. The Central Commission has passed a detailed order after interpreting the provisions of PPA. However, we can come to the conclusion whether, the Central Commission has correctly interpreted the provisions of the PPA or not, only after hearing the parties while disposing the main Appeal.

7. In view of above, we are not inclined to pass any interim order in the above IA. Accordingly, the IA no. 348 of 2013 in Appeal no. 261 of 2013 is disposed of.

8. Post the matter on 16.1.2014 for hearing the main Appeal. In the meantime the parties are directed to complete the pleadings.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE
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