

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

IA No.49 of 2014
IN
APPEAL No.275 of 2013

Dated:27th Mar, 2014

**Present: HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM,
CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

In the Matter of:

**Mangalore Electricity Supply Co. Ltd.,
Paradigm Plaza,
A.B Shetty Circle,
Mangalore-575 001**

...Appellant/Applicant

Versus

**1. M/s. AMR Power Private Limited.,
Suite No.701-702,
Prestige Meredian-2,
No.30, M.G. Road,
Bangalore-560 001**

**2. Karnataka Electricity Regulatory Commission
6th & 7th Floor, Mahalaxmi Chambers,
No.9/2, M.G. Road,
Bangalore-560 091**

...Respondent(s)

**Counsel for the Appellant(s) : Ms. Sumana Naganand
Mr. Sriranga S.
Mr. Shodhan Babu**

Counsel for the Respondent(s): Mr. Basava Prabhu Patil, Sr Adv
Mr. Shridhar Prabhu
Mr. B S Prasad
Mr. Venkata Krishna Kunduru

ORDER

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

1. M/s. AMR Power Private Limited, the Respondent herein has filed this Application seeking for the interim directions pending disposal of the Appeal.
2. M/s. Mangalore Electricity Supply Company Limited has filed the above Appeal challenging the Order passed by the Karnataka State Commission dismissing the Petition filed by the Appellant challenging the Termination Notice issued by M/s. AMR Power Private Limited (Respondent).
3. Pending disposal of the said Appeal, the Appellant has filed the interim Applications in IA No.371 of 2013 seeking for the stay of the operation of the Impugned Order.
4. This Tribunal, after hearing the parties in the Interim Applications, disposed those Applications without granting stay by posting the Main Appeal itself for final disposal on 8.1.2014.

5. At that stage, the Respondent approached and made a representation to the Appellant to grant consent for signing the Wheeling and Banking Agreement. However, the Appellant did not incline to grant consent on the ground that the Appeal against the Impugned Order was pending in this Tribunal.
6. In view of the above, the present Petition has been filed in IA No.49 of 2014 by the Respondent in the Appeal seeking for the following directions:

“To direct the Appellant to accord consent to enter into Wheeling and Banking Agreement to allow the Respondent to bank and wheel the energy pumped from June, 2013. In the alternative, to direct the Appellant to pay for the energy pumped from June, 2013 onwards at Rs.5.50 per Kwh or at any higher rate at which the Appellant is producing power under open tender from other parties”.

7. Opposing this prayer, the Appellant has also filed a reply. In the meantime, we have taken the Main Appeal for hearing and heard the parties.
8. At this stage, the learned Senior Counsel for the Respondent represented with regard to the urgency for signing of the Wheeling Agreement on or before 31.3.2014

and prayed for interim direction pending disposal of the Appeal. Accordingly, we had directed the Respondent to file the Memo narrating the nature of the urgency in regard to signing of the Wheeling and Banking Agreement. Accordingly, Memo has been filed by the Respondent on 24.3.2014. The contents of the Memo are as follows:

“Though PPA is terminated in terms of Termination Notice dated 22.7.2011, the Respondent has been unreasonably prevented by the Appellant from supplying power to third parties on the untenable grounds. Hence, the Respondent has filed IA No.49 of 2014, pending the Appeal, praying inter-alia that interim order directing the Appellant to accord consent and take all other steps to enable it to enter into Wheeling and Banking arrangement or in the alternative, direct the Appellant to pay at the rate Rs.5.50 per Kwh. As per Order of KERC dated 10.10.2013 it has extended the validity of the Wheeling and Banking Regulations till 31.3.2014 only. If this Respondent is prevented from signing the Wheeling and Banking Agreement on or before 31.3.2014, the Respondent may be precluded from availing the benefit in future. Hence during the hearing on 5.3.2014, the Respondent No.1 submitted

before this Tribunal to direct the Appellant to execute the Wheeling and Banking Agreement even if the same is not given effect to. Accordingly, the Appellate Tribunal had directed the learned Counsel for the Appellant to get instructions from his client regarding the consent for signing of the Wheeling and Banking Arrangement. On the next date of hearing i.e. 12.3.2014, the learned Counsel for the Appellant submitted that there are no instructions and sought for further time. Therefore, the matter was adjourned for hearing. The Respondent also was directed to file the Memo giving the details of urgency. Accordingly, this Memo is filed praying that the Appellant be directed to execute the Wheeling and Banking Agreement, even if the same is not given effect to till the decision by the Tribunal which would cause no prejudice to the Appellant. On the other hand, the Respondent No.1 will suffer irreparably, if the relief claimed is not granted”.

9. On the basis of this Memo, it is strenuously contended by the Respondent that if the Banking Agreement has not been signed on or before 31.3.2014, there will be a serious prejudice caused to the Respondent and on the other hand, no prejudice will be caused to the Appellant. It is also prayed

that such a direction may be issued to execute the Wheeling and Banking Agreement subject to the condition that the said Agreement would not be given effect till a decision is taken by this tribunal in the Appeal.

10. However, the learned Counsel for the Appellant has opposed this prayer contending that there will be no prejudice caused to the Respondent if the said issue could be decided at the time of the final disposal of the Appeal.
11. We have heard the parties on 24.3.2014 and reserved for orders.
12. At this stage, the learned Counsel for the Appellant filed response on 26.3.2014 to the Memo dated 24.3.2014. Through this Memo, the Appellant opposed the prayer of the Respondent mainly on the ground that the apprehension of the Respondent is misconceived as the State Commission has already floated the discussion paper in this regard and that this Tribunal could mould the relief at the time of final disposal. We have carefully perused the said response dated 26.3.2014.
13. Having regard to the rival contentions of the parties, we are not inclined to grant interim orders with reference to the prayer directing the Appellant to pay for the energy being pumped by the Respondent to the Appellant at Rs.5.50 per

Kwh or at any higher rate. However, we feel that it would be appropriate to give a direction to the Appellant to execute the Wheeling and Banking Agreement on or before 31.3.2014 in view of the fact that as per the Orders of the State Commission dated 10.10.2013, the State Commission has extended the validity of the Wheeling and Banking Regulations only up to 31.3.2014 and also in view of the statement that if the Respondent is prevented from signing Wheeling and Banking Agreement before 31.3.2014, the Respondent would be precluded from availing the benefit in future.

14. Accordingly, the Appellant is directed to execute the Wheeling and Banking Agreement on or before 31.3.2014.
15. It is made clear that this interim direction is subject to the outcome of this Appeal and the said Wheeling and Banking Agreement which is to be executed on or before 31.3.2014 should not be given effect to till the final decision is taken by this Tribunal in this Appeal.
16. This direction in our view would protect the interest of both the parties.

17. With these directions, the Application in IA No.49 of 2014 is disposed of.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:27th Mar, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~