

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

I.A. No. 158 of 2014 in Appeal No. 27 of 2014

I.A. No. 159 of 2014 in Appeal No. 28 of 2014

&

I.A. No. 164 of 2014 in Appeal No. 32 of 2014

Dated: 23rd May, 2014

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

I.A. No. 158 of 2014 in Appeal No. 27 of 2014

In the matter of:

**Indraprastha Power Generation Co. Ltd.,
Himadri, Rajghat Power House Complex,
NEW DELHI-110 002**

....Applicant/Appellant

Vs.

**1. Delhi Electricity Regulatory Commission,
Viniyamak Bhavan, C- Block, Shivalik,
Malviya Nagar,
NEW DELHI-110 017.**

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

**3. BSES Yamuna Power Limited,
Shakti Kiran Vihar, Karkardooma,
Delhi-110 092**

.... Respondents

**Counsel for the Applicants/
Appellant (s):**

**Mr. Anand K. Ganesan
Ms. Swapna Seshdari
Ms. Mandakini Ghosh**

Counsel for the Respondent(s):

**Mr. Manu Seshadri for R-1
Mr. Nishan L.**

**Mr. Amit Kapur
Mr. Vishal Anand,
Mr. Rahul Kinra for R-2 & 3**

I.A. No. 159 of 2014 in Appeal No. 28 of 2014

In the matter of:

**Pragati Power Corporation Ltd.,
Himadri, Rajghat Power House Complex,
NEW DELHI-110 002**

....Applicant/Appellant

Vs.

**1. Delhi Electricity Regulatory Commission,
Viniyamak Bhavan, C- Block, Shivalik,
Malviya Nagar,
NEW DELHI-110 017.**

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

**3. BSES Yamuna Power Limited,
Shakti Kiran Vihar, Karkardooma,
Delhi-110 092**

.... Respondents

**Counsel for the Applicants/
Appellant (s):**

**Mr. Anand K. Ganesan
Ms. Swapna Seshdari
Ms. Mandakini Ghosh**

Counsel for the Respondent(s):

**Mr. Manu Seshadri for R-1
Mr. Nishan L.
Mr. Amit Kapur
Mr. Vishal Anand,
Mr. Rahul Kinra for R-2 & 3**

I.A. No. 164 of 2014 in Appeal No. 32 of 2014

In the matter of:

**Delhi Transco Limited,
Shakti Sadan, Kotla Road,
NEW DELHI-110 002**

....Applicant/Appellant

Vs.

**1. Delhi Electricity Regulatory Commission,
Viniyamak Bhavan, C- Block, Shivalik,
Malviya Nagar,
NEW DELHI-110 017.**

2. **BSES Rajdhani Power Limited,
BSES Bhawan,
Nehru Place,
New Delhi-110 019**
3. **BSES Yamuna Power Limited,
Shakti Kiran Vihar, Karkardooma,
Delhi-110 092**

.... Respondents

**Counsel for the Applicants/
Appellant (s):**

**Mr. Anand K. Ganesan
Ms. Swapna Seshdari a/w
Mr. Surender Babbar
Mr. Phani Kumar
Mr. K.K. Verma
Mr. Naveen Goel (Reps.)
Ms. Mandakini Ghosh**

Counsel for the Respondent(s):

**Mr. Manu Seshadri for R-1
Mr. Nishan L.
Mr. Amit Kapur
Mr. Vishal Anand,
Mr. Rahul Kinra for R-2 & 3**

ORDER

Rakesh Nath, Technical Member

The above IAs have been filed by the State owned Generating Companies in Appeal no. 27 of 2014 and batch filed by them against the order dated 5.11.2013 passed by Delhi Electricity Regulatory Commission (“State Commission”) directing to set up empowered committee which will function with the intention of

optimally utilizing the funds recovered by the Respondent Discoms viz. BYPL and BRPL.

2. The Applicants/Appellants have stated that they were not being paid by the Respondent Discoms for the power supplied by them against the Power Purchase Agreement from October 2010 onwards except for some ad-hoc payments made from time to time as per the convenience of the Discoms placing the Applicants in a very precarious financial condition. Despite the interim order dated 5.11.2013 by the State Commission to pay the current bills, the payment were not released and after passing of the impugned order dated 5.11.2013, they have stopped making on payment against the monthly bills. Even after the directions of the Hon'ble Supreme Court dated 26.3.2014 to the Respondent Discoms to make current

payments from the month of January 2014, the payments were not forthcoming. The Applicants in the IA have sought interim directions to the Respondent Discoms to pay the current dues.

3. In reply the Respondent Discoms have stated that Delhi Government by letters dated 12.9.2013 and 24.3.2014 had sanctioned payment of subsidy to them which had been adjusted against the outstanding dues of all the Applicants. Hon'ble Supreme Court by order dated 26.3.2014 has directed that the Respondent Discoms will continue to pay the current payments to the generating and transmission companies w.e.f. 1.3.2014 which will relate to billing period from 1st January, 2014. Thus, the claim of the Applicants for the period upto December 2013 is beyond the Hon'ble Supreme Court's order dated 26.3.2014.

According to them after adjustment of Government subsidy against the current bills no payment is due to the Applicants. They have also expressed inability to make timely payments under the PPAs to the Applicants on account of failure of the State Commission to provide cost reflective tariff and huge regulatory assets which have accumulated on this account.

4. We had directed the Applicants to submit upto date position of dues by the Respondent Discoms. Accordingly, the Applicants filed affidavit regarding month-wise billing, payment released, adjustment made from the Government subsidy and UI diversions for the period September 2013 to March 2014.

5. We have heard Shri Anand K. Ganesan, learned counsel for the Applicants/Appellants and Shri Amit Kapur, learned counsel for the Respondent Discoms.

6. Shri Anand K. Ganesan, learned counsel for the Applicants/Appellants has stated that the Government subsidy and UI diversions payable to the Respondent Discoms and credited to their account by the State Government orders have been adjusted against the past arrears of the Discoms as per the directions of the State Government. On the other hand, the contention of Shri Amit Kapur, learned counsel for the Respondent Discoms is that after adjustment of the Government subsidy and UI discoms against the current payment, no amount against the current bills is due to be paid by the Discoms.

7. We have carefully considered the rival contentions of the parties and gave our thoughtful considerations to those points.

8. We have also perused the orders dated 26.3.2014 and 6.5.2014 of the Hon'ble Supreme Court in the Civil Appeal no. 884 of 2010 and batch directing the Respondent Discoms to continue payment to the generating and transmission companies w.e.from 1.3.2014 which will relate to the billing period from 1.1.2014. Thus, it is evident that in view of the Hon'ble Supreme Court's directions, the current payments of the Applicants from the billing period from 1.1.2014 have to be paid by the Respondent Discoms regularly.

9. Thus, the only issue which we have to consider is adjustment of Government subsidy and UI diversions

credited to the Applicants on account of the Respondent Discoms. We notice from the affidavit of the Applicant that as far as BRPL is concerned even if the adjustment of Government subsidy is made against the dues from September 2013 to March 2014, as contended by the Respondent Discoms, the balance amount due to be paid for the period Sept.'13 – March'14 is more than the payment due for the billing period Jan-March 2014, which they have to pay as per the directions of the Hon'ble Supreme Court.

10. We find that the Government of NCT of Delhi by orders dated 12.9.2013 and 24.3.2014 credited amounts of subsidy payable to the Discoms to the Applicants towards outstanding dues of the Respondent Discoms as part of their liabilities. Thus, there is a clear directions by the Government of NCT of

Delhi in these orders to adjust the amount towards only the outstanding dues.

11. We have also examined the letter dated 2.7.2013 from the Government of NCT of Delhi addressed to SLDC directing them to credit the UI charges payable to BYPL to PPCL/Applicant till the loan/liabilities are liquidated by BRPL/BYPL. However, by letter dated 28.11.2013, the Government of NCT modified the directions given in letter dated 2.7.2013 directing the SLDC that the UI funds currently payable to BYPL may be settled against the outstanding dues payable by them to the Applicants/Appellants.

12. In view of above, the amount of Govt. subsidy and UI amounts credited to the Applicants have been correctly adjusted only against the outstanding dues

but not against the current dues form January to March 2014 as per the directions of the Govt of NCT.

13. Therefore, we direct the Respondent Discoms to make payment to the Applicants/Appellants for the current payments from the billing period from 1.1.2014 regularly as per the directions of the Hon'ble Supreme Court.

13. In view of above, the IAs are allowed to the extent indicated above.

14. Post the main Appeals for hearing on _____.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

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REPORTABLE/NON-REPORTABLE