**IN THE APPELLA TE TRIBUNAL FOR ELECTRICITY**
**(Appellate Jurisdiction)**

***APL No. 363 OF 2018***

**Dated: 27th February , 2020**

**Present: Hon`ble Mr. Ravindra Kumar Verma,Technical Member(Electricity)**
**Hon`ble Mr. Justice R.K. Gauba, Judicial Member**

**In the matter of:**

**Dhariwal Infrastructure Limited**
**Mr. Subhransu Gupta,**
**Chief Financial Officer**
**CESE House**
**Chowringhe Square**
**Kolkata – 700 001**

**....Appellant**

**Versus**

1. **Maharashtra Electricity Regulatory Commission**
   **The Secretary**
   **World Trade Centre, Centre No.1,**
   **13th Floor, Cuffe Parade,**
   **Colaba, Mumbai-400005** **...Respondent No.1**

2. **Maharashtra State Electricity Distribution Company Limited**
   **The Chief Engineer (Power Purchase)**
   **Prakashgad, Plot No. G-9,**
   **Bandra (East),**
   **Mumbai – 400 051** **...Respondent No.2**

**Counsel for the Appellant(s) : Ms.Divya Chaturvedi**

**Counsel for the Respondent(s) : Mr. Pulkit Tare**
**Mr. Udit Gupta for Res2**

**Mr. Anup Jain for Res2**

## JUDGMENT (ORAL)

## PER HON'BLE MR. JUSTICE R.K. GAUBA

1. The Appellant is a generator maintaining and operating two units of coal-fired thermal generation plants. For purposes of setting up the said units, the construction work started some time in 2011. It had entered into an arrangement with the second Respondent (Discom) for supply of electricity for purposes of start-up, its need continuing the first unit having been commissioned on 11.02.2014 followed by the second unit commissioned on 02.08.2014.

2. The Appellant was a consumer for start-up power for the period 01.09.2013 to 31.05.2015. By the billing raised for supply of such electricity in terms of the Supply Agreement dated 07.01.2013, the Respondent Discom treated it as a commercial consumer on the reasoning that it would fall in the residual category, referring in this context to the tariff schedule, in absence of any separate category for start-up power consumer being specified in tariff schedule.

3. The Appellant, however, claimed parity with another similar entity viz. Adani Power Maharashtra Limited *(APML)*, which had been treated as industrial consumer for purpose of start-up power by the State Commission on 03.02.2014 in case No. 51 of 2013. The contentions of the Appellant in that regard were rejected by the State Commission by order dated 01.08.2018 in MERC case No. 67 of 2018 which is challenged before us by the present Appeal.

4. It is noted that in the Power Purchase Agreement (PPA) dated 08.09.2008 for start-up power in the case of *APML*, there was a specific stipulation (Article 11.9) to the effect that the payment for start-up power the liability of the consumers would be *"at the then prevalent rate payable by such industrial consumers"* and accepting the contention of *APML*, the State Commission by its order dated 03.02.2014 directed the Respondent Discom to charge *APML* for start-up power at industrial rates rather than treat it in the residual category wherein the liability would be that of a commercial consumer.

5. The supply agreement dated 07.01.2013 entered upon by the Appellant with the Respondent Discom, however, did not specify the category in which charges were to be paid for the start-up power. Its Clause 5.1 would only refer to “tariff schedule” which, as already observed, does not specify the category of the start-up power consumer.

6. At the hearing, it came out that the Respondent Discom has accepted the ruling of the State Commission in case of *APML* for general application and has treated the Appellant also as an industrial consumer for purpose of start-up power for the period 03.02.2014 to 31.05.2015. It, however, refuses to treat it similarly for the preceding period i.e. 01.09.2013 to 02.02.2014 on the reasoning that the ruling in *APML* could not have a retrospective effect.

7. Having heard the parties on both sides, we are of the considered view that creating an artificial compartment for purpose of the same consumer is inappropriate. The Appellant

remained consumer of start-up power for the entire period i.e. 01.09.2013 to 31.05.2015. There was no clarity either in the Supply Agreement or in the tariff schedule, or for that matter, in the prevalent tariff regulations as to the category in which such consumer would fall. The decision of the State Commission rendered in the case of *APML* brought about some clarity. The Respondent Discom, by applying the same principle as was decided upon in *APML* to the case of the similarly placed other consumers, particularly the Appellant, has actually acquiesced into the applicability of the said principle without any demur. The declaration of the category by the ruling of State Commission in case of *APML* by decision dated 03.02.2014 does not mean that it would have only a prospective effect. The consumer, in fact, stands categorised as an industrial consumer for purpose of start-up power for which liability began on 01.09.2013.

8. For the foregoing reasons, we find the approach of the State Commission in the impugned order to be erroneous. The said order, to the extent thereby the benefit of categorization of an

industrial consumer for the period 01.09.2013 to 02.02.2014 was declined, is set aside.

9. Needless to add that the Respondent Discom will be obliged to revise and appropriately correct the accounts for the above mentioned period and refund the tariff difference to the Appellant along with interest in accordance with relevant tariff regulations. The compliance shall be made with the above directions within six weeks.

10. The Appeal and applications, if any pending, stand disposed of in above terms.

**(Justice R.K. Gauba)**
**Judicial Member**

**(Ravindra Kumar Verma)**
**Technical Member**

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**REPORTABLE/NON-REPORTABLE**

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