APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 387 OF 2017

AND

EXECUTION PETITION NO. 01 OF 2017 IN APPEAL NO. 228 OF 2012

Dated : 12th March, 2020

PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

IN THE MATTERS OF :

APPEAL NO. 387 OF 2017

Southern Power Distribution Company of
Andhra Pradesh Limited
D. No. 19-13-65/A, Raghavendra Nagar,
Keavayanagunta, Tiruchanoor Road,
Tirupati, Andhra Pradesh – 517501 .... **APPELLANT**

Versus

1. **Andhra Pradesh Electricity Regulatory Commission**
   4th Floor, Singareni Bhawan,
   Red Hills, Lakadi-ka-pul,
   Hyderabad – 500004.

2. **M/s SNJ Sugars & Allied Products Pvt. Ltd.**
   Formerly known as M.s Sagar Sugars
   and Allied Products Ltd.
   Nelavoy (V), Sri Rangrajapuram Mandal,
   Chittoor District, Andhra Pradesh.

3. **The Chief Engineer I.P.C**
   APTRANSCO, Vidyut Soudha,
   Khairatabad Road, Hyderabad
   Telengana – 500004.

4. **The Superintending Engineer**
   (TL & SS), APTRANSCO Kadapa Zone
   Kadapa, Hyderabad
   Telengana – 500004. .... **RESPONDENTS**

Counsel for the Appellant(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Prerna Singh
Ms. Geet Ahuja
Mr. Prashant Mathur
Ms. Rajshree Chaudhary

Counsel for the Respondent(s) : Mr. K.V. Mohan
Mr. K.V. Balakrishnan
Mr. Rahul Kumar Sharma **for R-1**

Mr. Raju Ramachandran, Sr. Adv.
Mr. A. Sashidharan
Mr. A. Venayagam Balan
Ms. V. S. Lakshmi **for R-2**

EXECUTION PETITION NO. 01 OF 2017 IN APPEAL NO. 228 OF 2012

M/s. SNJ Sugars and Products Limited
Formerly known as
M/s. Sagar Sugars and Allied Products Ltd.
Nelavoy (V), Sri Rangarajapuram Mandal,
Chittoor District, Pin Code - 517167
Andhra Pradesh. .... **PETITIONER**

Versus

1. **Transmission Corporation of**
   Andhra Pradesh Limited,
   Rep. by its Chairman and Managing Director
   Vidyut Soudha, Khairatabad Rd.,
   Hyderabad, Telangana – 500004.

   Now through A.P. Southern Power
   Distribution Company (APSPDCL)
   Rep. by its Chairman and Managing Director,
   D.No.: 19-13-65/A, Srinivasapuram,
   Tiruchanoor road, Tirupati – 517503,
   Chittoor District,
   Andhra Pradesh.

2. **The Chief Engineer I.P.C.,**
   APTRANSCO, Vidyut Soudha,
   Khairatabad Rd., Hyderabad,
   Telangana – 500004.

3. **The Superintending Engineer (TL & SS)**,
   APTRANSCO Kadapa Zone,
   Kadapa, Hyderabad,
   Telangana – 500004.

4. **Andhra Pradesh Electricity Regulatory Commission**
   4th & 5th Floors 11-4-660,
   Singareni Bhavan Red Hills,
   Hyderabad,
   Telangana – 500004 .... **RESPONDENTS**

Counsel for the Petitioner(s) : Mr. Raju Ramachandran, Sr. Adv.
Mr. A. Sashidharan
Mr. A. Venayagam Balan
Ms. V. S. Lakshmi

Counsel for the Respondent(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.
Ms. Prerna Singh
Ms. Geet Ahuja
Mr. Prashant Mathur **for R-3**

Mr. K.V. Mohan

Mr. K.V. Balakrishnan
Mr. Rahul Kumar Sharma **for R-4**

J U D G M E N T

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON

1. This Appeal is filed by Southern Power Distribution Company of Andhra Pradesh Limited challenging the impugned order dated 03.11.2017 passed by Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as **"APERC/Commission"**).

2. The brief facts which led to filing of the present Appeal are as under:

(i) 2nd Respondent – M/s SNJ Sugars & Allied Products Pvt. Ltd. is a sugar plant with co-generation power plant having capacity of 20 MW. It uses bagasse as a fuel for power generation. It approached the Non-conventional Energy Development Corporation of Andhra Pradesh Limited (known as **"NEDCAP"**) for setting up of power plant and accordingly it got the approval on 07.04.2000.

(ii) 2nd Respondent expected to commence operation of sugar plant and co-generation plant by the end of December 2002. It entered into agreements with the local cane growers for supply of

sugar cane to its plant for the crushing season of Financial Year 2002-03. Consequently, it approached APERC for permission to supply power generated from its plant to the Appellant-Discom and the said permission was granted on 25.01.2002.

(iii) Subsequently, the 2nd Respondent entered into Power Purchase Agreement (in short **"PPA"**) with the erstwhile Andhra Pradesh Transmission Corporation (hereinafter referred to as **"APTRANSCO"**) which is the predecessor of the Appellant herein. In terms of the PPA, the 2nd Respondent had to export 9.9 MW power to the Grid for sale to the Appellant during sugar season and power to the extent of 16.94 MW during off-season. Admittedly, the 2nd Respondent though was able to establish co-generation power plant, but was unable to establish sugar plant as intended during the crushing season of Financial Year 2002-03. Therefore, it had to secure bagasse from the neighbouring sugar plants for generating power.

(iii) On 13.01.2003, the co-generation power plant was synchronised and started supplying energy from that day to the Grid of the Appellant. On 17.03.2003, it approached 1st Respondent-APERC seeking permission to export the entire unutilized surplus power to the Grid of the Appellant which was accordingly granted.

(iv) When APTRANSCO decided to stop evacuation of power from the power plant of the 2nd Respondent and to cut off the supply since the power plant could not be classified as a co-generation plant for want of commissioning of sugar plant, 2nd Respondent approached the High Court in Writ Petition (W.P.) No. 7395 of 2003. An interim order was passed by the High Court directing APTRANSCO to purchase power from the 2nd Respondent at the rate of Rs.2/- per unit. On 16.05.2003, in consequence of the interim direction of the High Court, 2nd Respondent was permitted to synchronise the power plant and the entire energy was delivered by the 2nd Respondent's power plant at the Rs.2/- per unit.

(v) On 10.07.2003, a Writ Appeal (W.A.) No. 745 of 2003 came to be filed by APTRANSCO challenging the interim order of the Single Judge. The High Court passed an order clarifying that APTRANSCO is not bound to purchase the entire power generated by the 2nd Respondent but only such power which they are bound to purchase in terms of the PPA. They also opined that a Review Petition could be filed before APERC seeking review of the order dated 17.03.2003 as expeditiously as possible. APERC allowed the Review Petition and set aside its earlier order dated 17.03.2003.

(vi) On 15.12.2003, the above Writ Petition No. 7395 of 2003 came to be disposed of directing APTRANSCO to evacuate power as agreed under the PPA. Meanwhile on 20.01.2004, sugar plant of the 2nd Respondent was commissioned.

(vii) APTRANSCO filed W.A. No. 191 of 2004 against the order dated 15.12.2003 passed by the Single Judge. On 22.04.2004, Division Bench passed interim order directing APTRANSCO to pay Rs.2.69 per unit until further orders. On 30.07.2004, the High Court disposed of both the Writ Appeal Nos. 191 of 2004 filed by APTRANSCO and CMA No. 3613 of 2003 filed by 2nd Respondent. By virtue of this order, the High Court set aside the order of the Single Judge and directed both the parties to approach the appropriate forum in terms of the PPA for resolving the dispute. It reiterated that 2nd Respondent-Generator would be entitled to interim relief of cost of power at the rate of Rs.2.69 per unit till settlement of the dispute before the appropriate forum.

(viii) On 01.11.2004, 2nd Respondent-Generator approached the Hon'ble Supreme Court in Civil Appeal (C.A.) Nos. 5157 of 2005 and 5159 of 2005 challenging the order dated 30.07.2004 of the Division Bench of the High Court. In these Civil Appeals, Hon'ble Supreme Court, on 08.02.2006 directed APTRANSCO to pay at Rs.3.11 per

unit for the energy delivered by the 2nd Respondent as an interim measure. This was duly paid by APTRANSCO. The Hon'ble Supreme Court disposed of the Civil Appeals by remanding the matter and directed APERC to decide the dispute between the parties as to whether 2nd Respondent would be entitled to have the same price at par with the price of power supplied by other non-conventional energy projects for the period between 13.01.2003 to 21.01.2004 during which the sugar plant of the generator had not commenced its production of sugar.

(ix) Pursuant to the said direction of the Apex Court, 1st Respondent-APERC, on 27.08.2012 fixed price of the power at the rate of Rs.0.92 per unit between 13.01.2003 to 31.03.2003 (Financial Year 2002-03) and at the rate of Rs.0.97 per unit for the period between 01.04.2003 to 20.01.2004 (Financial Year 2003-04).

(x) Challenging the said order of APERC, Appeal No. 228 of 2012 came to be filed by the 2nd Respondent-Generator before this Tribunal. This Tribunal disposed of the said Appeal on 04.02.2013 opining that the 2nd Respondent-Generator shall be paid Rs.3.32 per unit for the period between 13.01.2003 to 31.03.2003 and at Rs.3.48 per unit from 01.04.2003 to 21.01.2004. The Tribunal further directed the Appellant-APTRANSCO to make the payment to 2nd

Respondent on account of difference between the above tariff and the tariff at which payments were already made together with simple interest at the rate of 10% per annum.

(xi) This came to be challenged before the Hon'ble Supreme Court by Andhra Pradesh Power Coordination Committee. The said Appeal came to be dismissed on 12.07.2016, so also the Review Petition met the same fate since it came to be dismissed on 04.10.2016.

(xii) Subsequently, Execution Petition No.01 of 2017 came to be filed before this Tribunal, and this Tribunal on 31.05.2017 remanded the matter to APERC directing APERC to calculate only the actual amounts due to 2nd Respondent-Generator. It also rejected the relief sought by the Discom for directing Telengana Discom to pay their share of amounts pursuant to the bifurcation of the erstwhile State of Andhra Pradesh. Liberty was granted to both the parties to approach the Tribunal if circumstances warrant so.

(xiii) Accordingly, the Appellant-Discom and 2nd Respondent-Generator, in response to the directions of APERC, submitted respective calculations.

(xiv) 1st Respondent passed the impugned order dated 03.11.2017 directing the Appellant to pay Rs.13,84,19,133/- (Rupees Thirteen Crores Eighty Four Lakhs Nineteen Thousand One Hundred Thirty Three only). According to the Appellant, this calculation was done by the Commission totally ignoring the fact that the tariff had been fixed by this Tribunal only for the quantum of the power specified in the PPA, and the calculation of interest also is contrary to the directions of this Tribunal.

3. To substantiate their stand, the Appellant contends that this Tribunal fixed the tariff based on the terms of PPA between APTRANSCO and 2nd Respondent, therefore the tariff applicable would be only for the quantum of electricity specified in the PPA which is clear from the order dated 04.02.2013 at Para 36.

4. The Appellant further contends that APERC has erroneously opined that the quantum of power supplied and received during the relevant period is not in controversy. Further, APERC totally ignored the direction of the High Court in W.A. No. 745 of 2003 in its order dated 10.7.2003 wherein the 2nd Respondent-Generator was held to be entitled to the tariff only in respect of the units of power in terms of the PPA. Therefore, according to the Appellant, 2nd Respondent-Generator is entitled for a sum

of Rs.3,44,17,693/- as principal amount (differential amount that was computed by the Appellant after deducting the amount already paid).

5. Appellant also contends that since this Tribunal by order dated 04.02.2013 has not stated as to from which date interest is to be paid, the provisions of Section 34 of Civil Procedure Code (in short **"C.P.C."**) would be applicable while computing the interest. Therefore, the computation of interest done by APERC in the impugned order is not only contrary to the Judgment of this Tribunal but also against the provisions of C.P.C.

6. With these averments, the Appellant has sought for setting aside the order dated 03.11.2017 passed by APERC and to pass just and equitable relief as deem fit by this tribunal in favour of the Appellant.

7. Based on the above pleadings, the following questions of law are raised by the Appellant:

A. Whether the passing of the impugned order is bad in law?

B. Whether tariff as per the PPA ought to be calculated for quantum of electricity beyond the electricity specified in the PPA?

C. Whether the interest ought to have been calculated for the entire period in a manner contrary to the provisions of the C.P.C. even though the order of this Tribunal did not specify such period?

2nd Respondent-Generator filed reply/counter, in brief, as under:

8. 2nd Respondent contends that the Appeal is not maintainable, since in terms of the order dated 31.05.2017 passed in E.P. No.01 of 2017 in Appeal No. 228 of 2012, the Appellant is entitled to file appropriate application before this Tribunal if circumstances warrant. Therefore, the present Appeal is not maintainable in terms of Section 111 of the Electricity Act, 2003 (hereinafter referred to as **"the Act"**). It is further contended that the Respondent-Commission has no power of execution under the Act. Therefore, by order dated 31.05.2017, this Tribunal directed the Respondent-Commission only to determine the amount payable after calculating the amount in terms of the Judgment of this Tribunal dated 04.02.2013. Accordingly, the order passed, quantifying the amount payable to the 2nd Respondent after deducting the amount which were already paid to the 2nd Respondent. Since the calculation made by the 2nd Respondent is strictly in terms of directions of this Tribunal in E.P. No.01 of 2017, the Appeal is not maintainable.

9. 2nd Respondent also contends that since the order in question is not passed in exercise of its jurisdiction conferred on it under the Act, the Appeal cannot lie against the calculation of the amount determined by the Commission by the order dated 03.11.2017. The liberty reserved is only for the purpose of filing an appropriate application in Execution Petition No.01 of 2017 and not for the purpose of filing Appeal.

10. According to 2nd Respondent, the order dated 31.05.2017 by this Tribunal is a pre-emptory order directing the Respondent Commission only to quantify the amounts to be paid by APTRANSCO. The said pre-emptory order of this Tribunal cannot be challenged in this manner in this Appeal. Para 13 of the order dated 31.05.2017 clearly indicates what exactly was the direction to the Respondent-Commission is the stand of the 2nd Respondent.

11. 2nd Respondent further contends that the grounds raised by the Appellant are completely untenable. The Appellant cannot reopen the issues which are concluded by dismissal of the Appeal and Review Petition by the Hon'ble Supreme Court. The Appellant cannot contend that 2nd Respondent-Generator is entitled only to contracted capacity of power supply during the season and not for off-season as per the terms of PPA. Similar grounds were raised by APTRANSCO before the Hon'ble

Supreme Court against the Judgment in Execution in Civil Appeal No.6754 of 2013. But the Apex Court dismissed the Appeal and also the Review Petition.

Grounds raised in the Civil Appeal No.6754 of 2013 reads as under:

"Because the Appellate Tribunal also failed to give finding as to what was the contract capacity liable to be purchased by APTRANSCO during season and off-season period respectively as per PPA. The Appellate Tribunal also failed to give any findings as to what was the quantum of power that was received by Respondents and out of which what was the quantum of power contract to be purchased as per PPA and what is the quantum of excess power supplied to Respondents"

"Because the Appellate Tribunal failed to appreciate that Respondent No.1 during the season in all delivered 30.75 million units out of the same 10.35 million units are in excess than contracted capacity. Likewise, during the off-season period, the Respondent No.1 delivered 59.435 Million units and then 1.594 Million Union are in excess of the contracted capacity."

"Because the Appellate Tribunal failed to appreciate that even assuming without admitting, that the Respondents are entitled for tariff at par with other NCE projects during the disputed period, the amount entitled by the respondents would be approximately 27 Crs. Considering tariff for contracted capacity at Rs.3.32 per unit for three months and at Rs.3.48 per unit for balance period. Whereas the excess power of 11.945 MU at Rs.1.31 per Unit as per variable costs decided for 2004-2005."

12. According to 2nd Respondent, the Appellant tried to raise similar grounds based on Para 36 of the Judgment in Execution to contend that during the season, Respondent-Generator had supplied electricity in excess of contracted quantum of power agreed under the PPA as sugar

plant was not in operation, therefore the generator was not entitled for the same tariff fixed by this Tribunal. The said ground cannot be raised since at Para 3 of the Judgment, the Hon'ble High Court had treated the power supply by the Respondent-Generator on par with the non-conventional energy power. Therefore, irrespective of the supply during sugar season or off-season, the power supply during these periods has to be treated as non-conventional power. Therefore, the said issue cannot be allowed to be raised once again.

13. They further contend that at Para 36 of the Judgment, this Tribunal did refer to using bagasse for production of energy and still opined that it has to be considered as non-conventional source of energy. Therefore, the tariff applicable is non-conventional energy tariff. Since power supplied by Generator cannot be treated as co-generation power, distinction between power during season or off-season would not arise. Therefore, question of the 2nd Respondent-Generator supplying excess power during the season would not arise as contended by the Appellant.

14. 2nd Respondent-Generator also contends that the Appellant cannot be allowed to re-agitate the concluded issue since it is barred by principles of resjudicata. This Tribunal in the Judgment in Execution Petition at Para 42 and 44 specifically directed APTRANSCO to pay for the energy

supplied between 13.01.2003 to 21.01.2004 which means, according to the 2nd Respondent, for the entire energy supplied by the 2nd Respondent. Question of considering terms of PPA to distinguish energy supplied vis-à-vis excess energy supplied in terms of PPA would not arise. When it is considered as non-conventional energy source, it has to be treated as energy supplied. Therefore, the Tribunal was justified to direct APTRANSCO to pay the Generator for the energy supplied without any distinguishment.

15. Then coming to payment of interest, 2nd Respondent contends that Para 43 of the Judgment of this Tribunal clearly directs APTRANSCO to make payment to the Generator on account of difference between the tariff fixed and the tariff at which payment was made together with simple interest at the rate of 10% per annum. At Para 44, the Tribunal further directs APTRANSCO to pay balance amount due to the Appellant along with simple interest at 10% per annum. The balance amount due means the interest also has to be paid from the due date of payment as per the PPA. In terms of PPA, APTRANSCO has to pay the bill for the energy supplied on monthly basis, therefore the due date of each bill in terms of PPA is within 30 days from the metering date and APTRANSCO was required to pay the Generator within the said time. Any payment made beyond the due date of payment in terms of PPA, the APTRANSCO shall

pay interest at the rate of 10% per annum. Therefore, the Appellant now is not justified to contend that no date from which the interest has to be calculated is mentioned in the order of the Tribunal.

16. 2nd Respondent further contends that the clear and unambiguous words used in the orders in the Execution Petition by this Tribunal as "the amount due has to be paid along with interest" would only mean from the date on which the amount has become due till the date of actual payment. The Tribunal made this observation while passing the Decree by placing reliance on Article 5.2 of PPA. Therefore, Para 43 (iii) and Para 44 of the Judgment of the Tribunal dated 04.02.2013 is clear and unambiguous.

17. According to 2nd Respondent, in terms of the order dated 04.02.2013, the balance amount has to be paid to the Generator along with 10% interest within one month from the receipt of copy of the order. The date of receipt of the copy of the order is 08.02.2013. Therefore, balance due along with interest ought to have been paid by TRANSCO on or before 08.02.2013. Having deliberately and intentionally failed to pay the said amount for more than 4 years 10 months till date of filing counter by raising spurious objections, the Appellant-Discom cannot be heard to contend that no amount is payable by way of interest. The orders in W.A. No. 745 of 2003 is nullified by the order of the Hon'ble Supreme Court in

C.A. Nos. 5159 and 5157 of 2005. Therefore, Respondent-Commission was justified in arriving at the principal amount after taking into consideration the joint meter readings, invoices and payments made both for the Financial Year 2002-03 and Financial Year 2003-04. The principal amount payable was rightly arrived at. In the absence of dispute pertaining to contents of joint meter reading during the hearing before the Commission, the Discom cannot dispute the figures arrived at by the Respondent-Commission at this stage.

18. Pertaining to ground of application of provisions of Section 34 of C.P.C., 2nd Respondent-Generator contends that none of the provisions of C.P.C. including Section 34 is applicable to any order of the Tribunal in the light of Section 120 (1) of the Act. The orders in question must be read and understood on its own terms without reference to Section 34 of C.P.C. for the purpose of rejecting the future interest. Therefore, according to 2nd Respondent-Generator, it filed appropriate application in this regard before the Tribunal in terms of liberty granted.

19. With these submissions, 2nd Respondent sought for dismissal of the Appeal, allowing application filed in Execution Petition No.01 of 2017 with the prayer of future interest till the date of payment.

***Per contra*, the Appellant submitted rejoinder, in brief, as under:**

20. According to Appellant, the direction to pay Rs.13,84,19,133/- is based on an erroneous interpretation of the order dated 04.02.2013. Since this Tribunal by order dated 31.05.2017 had permitted the parties to approach the Tribunal for clarification, it would clearly indicate, the Tribunal did envisage a situation wherein certain grounds seeking clarification could be legally raised. Therefore, in light of the orders of the Commission dated 03.11.2017, only an Appeal lies, since Interlocutory Application can be filed only in pending matters. Hence, in terms of Section 111 of the Act, only Appeal is the course of action. The amount was also deposited as directed by this Tribunal.

21. Further, the Appellant referred to Para 4 of the order dated 04.02.2013 and also Clause 2.2 of the PPA pertaining to the tariff for the energy delivered at the interconnection point. Therefore, according to Appellant, the energy supplied in terms of the order dated 04.02.2013 would only mean for the power supplied in terms of PPA. Para 36, 43 and 44 of the said Judgment of the Tribunal again are reiterated to contend that APTRANSCO is obliged to purchase the energy supplied by the Generator during off-season i.e., 16.94 MW, and 9.99 MW during season but not the entire power that was generated. Since the developer claimed payment for the entire energy supplied, the Appellant had to raise new issue.

22. Appellant also contends that the orders of the High Court and the Tribunal have attained finality on the aspect of quantum of power for which amount has to be paid, since they were not challenged. The quantum of energy arrived at by the Respondent as per the PPA which were never challenged by the Generator has attained finality; therefore, this Tribunal after considering the conditions of PPA, directed APTRANSCO to pay Rs.3.32 per unit for the Financial Year 2002-03 and at Rs.3.48 per unit for the Financial Year 2003-04.

23. According to Appellant, until commissioning of the sugar plant, the developer was not classified as bagasse based co-generation power plant. But unfortunately, the Hon'ble Supreme Court without considering the merits in Appeal dismissed the Civil Appeal as well as the Review Petition. The terms of PPA clearly indicate how the Appellant is liable to pay for what quantum at what amount.

24. They also contend that the Appellant either as APTRANSCO or APDISCOM has paid adhoc tariff to the Generator during the disputed period and there was no dues payable to the developer prior to the orders of this Tribunal. For the first time by order dated 04.02.2013, this Tribunal directed APTRANSCO to pay differential amounts along with simple interest at the rate of 10% per annum. The said order is silent on the

issue as to from what date the liability of interest reckons. The Appellant has arrived at the interest from the date of the order of the Tribunal, since APTRANSCO had made payments based on different orders of various forums from time to time. Hence, no question of payment of interest from the date of dispute arises. It is only from the date of determination of tariff by competent authority and after expiry of 30 days, the liability of interest would arise. 1st Respondent in the impugned order, pertaining to interest, opined that in terms of Para 42 and 44 of the order of the Tribunal, 1st Respondent calculated the interest amount from the respective due date up to 08.03.2013, without considering the contentions of APTRANSCO/APSPDCL that they were liable to pay interest only from the date of the order of this Tribunal i.e., 04.02.2013. Hence, question of paying interest from due date does not arise is the stand of the Appellant.

25. Appellant also contends that for the first time, the Tribunal directed vide order dated 04.02.2013, the Appellant to pay differential amount along with simple interest and the said order is silent on the issue as to from what date the liability of interest need to be reckoned. Therefore, only from the date of determination of tariff by competent authority and after expiry of 30 days, the liability would arise to pay interest.

26. Appellant further contends that 1st Respondent-Commission has erroneously rejected arguments of the Appellant that for the purpose of calculation of interest from the date of the order of this Tribunal dated 04.02.2013 is to be considered. Therefore, future interest cannot be permitted beyond the date of the order dated 04.02.2013 in view of the general principle of law embodied in Section 34 of the C.P.C. According to Appellant, the principles underlying the provisions of C.P.C are regularly applied in the interest of justice by the Tribunal. Therefore, application of provisions of Section 34 is to be applied to the facts of the present case.

27. With these submissions, the Appellant sought for setting aside the impugned order dated 03.11.2017 by allowing the Appeal.

28. Based on the above pleadings, the points that would arise for our consideration are –

> **"Whether Appeal No. 387 of 2017 deserves to be allowed warranting interference with the order of the Respondent-Commission dated 03.11.2017?"** and
>
> **"whether IA No. 126 of 2018 filed by the Generator deserves to be allowed in E.P. No. 01 of 2017?"**

29. According to Mr. Basava Prabhu S. Patil, learned senior counsel arguing for Appellant, Respondent-SNJ Sugars is attempting to reopen the settled issues, therefore, it is incumbent on the part of the Appellant to explain the genesis of the disputes between the parties, scope of various judicial orders pertaining to the *lis* before us, apart from other settled questions of law.

30. Appellant contends that there was no adjudication on issues which pertain to the present controversy in the earlier proceedings between the parties. Therefore, chronology of events (history of the present dispute) is very relevant. That apart, this Tribunal according to the Appellant, must see whether the Respondent-SNJ Sugars is entitled for some tariff as applicable to energy supplied (contracted quantum under PPA). The Appellant further contends that in terms of various judicial pronouncements pertaining to determination of tariff, question of payment of interest on the difference in tariff paid with retrospective effect i.e., the date on which the bills were raised and became due for the respective amount, has to be paid in terms of the Tribunal's Order dated 04.02.2013 does not arise. Further, reiterating the contentions raised in the pleadings, the Appellant contends that in the procedure of cost plus approach it takes care of recovery of fixed cost which is spread over for the entire duration of the PPA. Therefore, question of incurring any additional/fixed cost for

energy supplied under PPA even if it is beyond the PPA quantum, would not arise because the energy supplied is by using the existing sources for generation or additional generation and supply of power. Hence, the developer is entitled to only variable tariff for the energy supplied beyond the contracted quantum. If the Appellant is made to pay fixed tariff for the energy supplied beyond the contracted capacity under the PPA, it would burden the Appellant with additional financial commitments, apart from making the developer becoming unjustly rich at the cost of consumers at large. This is so because the consumers are required to pay for something which has never been incurred by the generator. They place reliance on the decision of this Tribunal in Appeal Nos. 92 and 138 of 2007 dated 19.12.2008 in the case of ***Josil Limited vs. Transmission Corporation of Andhra Pradesh Limited.***

31. Appellant further contends that the Tribunal referring to the word "entire power" in its order dated 04.02.2013 would only mean that the power under PPA i.e., 16.94 MW during season and 9.99 MW during off-season. Therefore, the word expressed in the Tribunal's above order i.e., 'entire power' or 'delivered energy' did not indicate that it is the energy beyond the PPA and the said expression of words is misleading and misplaced. There was no occasion for this Tribunal to frame issue with regard to applicability of PPA tariff for energy supplied in terms of PPA and

energy supplied beyond PPA quantum. According to Appellant, this supply of energy (excess i.e., 11.74 MW) was with reference to the fact that Respondent-SNJ Sugars could not set up cogeneration plant during the disputed period, therefore, it was still a non-conventional energy. Therefore, the same tariff as applicable to other non-conventional developers must be paid to SNJ Sugars. The order, by any stretch of imagination cannot be interpreted to mean that payment of same tariff for energy supplied beyond the PPA quantum. This is absolutely misplaced and would be contrary to the decision in ***Josil Limited*'s** case, as referred to above. The proper understanding would lead to conclusion that Respondent-SNJ Sugars will be entitled to only variable tariff for the energy supplied beyond PPA quantum during the disputed period.

32. The next argument of the Appellant is with regard to interest claimed on the different amounts by way of tariff paid and tariff finally determined by virtue of the order dated 04.02.2013 by this Tribunal. According to Appellant, the Commission was not justified in opining that the interest would be computable from the date on which the respective bills fell due up to one month from the date of receipt of the Tribunal's order dated 04.02.2013. The Appellant further contends that the said opinion of the Commission is erroneous, since it is contrary to well settled law that liability to pay interest under Section 62 (6) of the Act is applicable only

when generating company wilfully recovers the tariff in excess of the tariff determined. For this preposition, they place reliance in the case of ***"M/s HIM Urja Private Limited vs. Uttarakhand Electricity Regulatory Commission"*** in Appeal No. 178 of 2014, so also in the case of ***"NTPC vs. MP State Electricity Board" (2011 (15) SCC 580).*** Alternatively, the amount can fall due only when the tariff is **determined**, therefore, due date of payment of the difference between the interim tariff and finally determined tariff is arrived at only when the tariff is finally determined i.e., on 04.02.2013. Therefore, learned senior counsel arguing for the Appellant contends that final determination of tariff does not relate to back date on which bills were issued.

33. The Appellant also contends that this Tribunal and the Hon'ble Supreme Court in the decisions referred to above clearly held that recovery of price or charging tariff beyond determined tariff under Section 62 (6) is prohibited. Therefore, if the licensee or generating company deliberately recovers or extracts from a person a price or a charge in excess of the price determined under Section 62 (6) of the Act, such person can claim the excess price or charge paid by him along with interest. Similarly, if the finally determined tariff is less than the provisional tariff or existing tariff continued by the statutory notification, then also the interest was not to be payable on the differential amount which was the

situation in the case of ***NTPC***'s decision. Hence, the Appellant contends that Section 62 (6) can be invoked only when generating company deliberately recovers price or charge in excess of tariff determination. Therefore, the said provision does not apply to Distribution Company recovering price in excess of tariff determined for the reasons that firstly Discom is the payer and not the receiver and secondly the liability of the Discom arises only when tariff is determined.

34. They also contend that only in the case of recovery of excess amount is wilful or deliberate, Section 62 (6) would come into play. It will not come into picture in a situation where final tariff is higher than provisional/interim tariff. In the present case, the Appellant has paid for the purchase of energy from SNJ Sugars at the rate determined by various judicial orders. The whole problem arose on account of default on the part of the Respondent-SNJ Sugars delaying in commissioning the sugar plant. There was no fault on the part of the Appellant on any count.

35. With these averments, contending that based on the principle of equity, justice and fair play, the Appellant prayed that no interest could be directed to be paid by the Appellant.

As against this, Respondent-SNJ Sugars submits its arguments, in brief, as under:

36. According to Respondent-SNJ Sugars, the contention of the Appellant that SNJ Sugars is attempting to reopen concluded issues is totally misplaced and deserves to be rejected. In terms of Para 42 and 44 of the Judgment dated 04.02.2013 in Appeal No. 228 of 2012, in unequivocal terms, this Tribunal has categorically held that Respondent-Generation Company there under was entitled for the payment of energy supplied during the disputed period. On this aspect, Hon'ble Supreme Court framed specifically a question as well i.e., when the sugar plant of the Respondent-Generation Company had not commenced production of sugar, the unutilized power supplied by the Respondent-Generation Company to APTRANSCO will have the same price as the price of power supplied by non-conventional energy projects in the State of Andhra Pradesh determined by APERC. Therefore, the Tribunal was justified in considering the said question and opining that the unutilised power supplied by the Respondent-Generation Company has to be on par with the other non-conventional energy projects as bagasse was used for production of electricity. There was yet another ground on why the Tribunal made such order i.e., it found no third party sales occurred in the State of Andhra Pradesh, therefore, there was no option to Respondent-

Generation Company to supply entire energy produced by it to APTRANSCO. Supply of energy beyond the contracted quantum during the disputed period was an issue and the same was decided in the earlier round of litigation i.e., before the Hon'ble Supreme Court in the Appeal and Review and Curative Petition filed by APTRANSCO. However, the same was rejected.

37. With regard to levy of interest on difference in tariff paid and the tariff finally determined, the Respondent-Generation Company reiterates its claim that it is entitled to claim the interest during the disputed period for treating the energy supplied as non-conventional energy. Para 38 of ***Sai Renewable Power Private Limited vs. APTRANSCO*** was relied upon. In this case, it was opined that APTRANSCO cannot deny the tariff which was given to other non-conventional energy plants at the relevant point of time. Therefore, by the Order dated 04.02.2013, the Tribunal did not determine any new tariff. It only opined that the Respondent-Generation Company is entitled for tariff on par with other non-conventional energy plants during the relevant point of time. As a matter of fact, the same rate was applicable at the relevant point of time.

38. They also reiterate the points which were raised in the pleadings while filing the counter affidavit by narrating the entire history. Therefore,

according to the Respondent-SNJ Sugars, the Appeal deserves to be dismissed and IA No. 126 of 2018 in EP No. 01 of 2017 filed by Respondent-Generation Company must be allowed granting interest at the rate of 10% per annum till the date of realization, since this Tribunal in its Order dated 04.02.2013 specifically granted future interest as well.

39. For the purpose of deciding the controversial issue, the decisions of the Hon'ble Supreme Court, this Tribunal and APERC are relevant. By disposing of the Civil Appeal No. 5159 of 2005 and 5157 of 2005, the Hon'ble Supreme Court on 13.10.2011 remanded the matter to the State Commission to decide whether the unutilized power supplied by the generator to APTRANSCO when the sugar plant of the generator was not commissioned, would get the same price at par with the price of power supplied by other non-conventional energy projects at the relevant point of time determined by the Commission. The Hon'ble Supreme Court disposed of the matter by passing the following order:

> *"9. We have considered the submissions of the learned counsel for the parties and we find that clause 2.2 of P.P.A. between the appellant and respondent no.1 reads as follows:*
>
> > *"2.2. The company shall be paid the tariff for the energy delivered at the interconnection point for sale to APTRANSCO at Rs.2.25 paise per unit with escalation at 5% per annum with 1994-95 as base year and to be revised on 1st April of every year up to the year 2003-2004. Beyond the year 2003-2004, the purchase price by*

> *APTRANSCO will be decided by Andhra Pradesh Electricity Regulatory Commission. There will be further review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable Cost."*

The dispute between the appellant and respondent No.1 before us is whether or not during the period 13.01.2003 to 21.01.2004, when the sugar plant of the appellant had not commenced production of sugar, the unutilized power supplied by the appellant to the respondent No.1 will have the same price as the price of power supplied by non-conventional energy projects in the State of Andhra Pradesh determined by the APERC. It will be more appropriate for the APERC, which is a regulatory commission with expertise in determination of price and tariff of power, to decide what would be the price for supply of power by the appellant to the respondent no.1 during the disputed period 13.01.2003 to 21.01.2004 and thereafter. By the judgment dated 08.07.2010 of this Court in Transmission Corporation of Andhra Pradesh Limited and Another etc. etc. v. Sai Renewable Power Private Limited and Others etc.etc. (supra), this Court has also remanded the matters to APERC to decide the 'purchase price' for procurement of the electricity generated by non-conventional energy developers in the facts of the circumstances of the case.

10. We, therefore, dispose of these appeals by directing that the APERC will consider all relevant materials and factors and finally determine the price of power supplied during the period 13.01.2003 to 21.01.2004 and thereafter and in accordance with the determination made by the APERC, balance payments, if any,

will be made by the respondent no.1 to the appellant. The appeals are disposed of accordingly. There shall be no order as to costs."

40. Based on the said direction of the Hon'ble Supreme Court, APERC passed orders on 27.08.2012 fixing the tariff of the power supplied between 13.01.2003 to 21.01.2004. Appeal No. 228 of 2012 came to be filed challenging the said price determined by APERC contending that the said tariff fixed by the Commission was much below the rate and is contrary to the directions issued by the Hon'ble Supreme Court as stated above. After hearing the parties at length, this Tribunal disposed of the Appeal as under by its Order dated 04.02.2013:

"43. Summary of Our Findings:

i) According to the remand order of the Hon'ble Supreme Court, the State Commission had to consider whether or not during the period 13.1.2003 to 21.1.2004 when the Sugar Plant of the Appellant had not commenced production of sugar, the un-utilised power supplied by the Appellant to APTRANSCO (R1) will have the same price as the price of power supplied by the other nonconventional energy projects in the State and to decide the price of power supplied by the Appellant to the Respondent No.1 during the period under dispute and thereafter. However, the State Commission has not considered the issue remanded by the Hon'ble Supreme Court and has gone into extraneous materials to come to the conclusion that

the power supplied during the disputed period by the Appellant was to be treated as infirm power and consequently it is entitled for only variable cost i.e fuel cost.

ii) *The admitted facts would indicate that there was never a question in relation to the authority of the Appellant to generate power and to supply to APTRANSCO. Neither the High Court nor the Hon'ble Supreme Court found that the Appellant was not authorised to generate power to supply the same to APTRANSCO. In fact for the said supply of power to APTRANSCO, adhoc rates were fixed by both the High Court and Hon'ble Supreme Court. Therefore, there is no merit in the contention of APTRANSCO that there was no sanction of law to generate power and to supply power.*

iii) *We have examined the issue remanded by the Hon'ble Supreme Court and have decided as under:*

a) *In view of permission granted by APTRANSCO on 11.1.2003 to the Appellant to synchronize the plant and explanation to Article 1.3 of the PPA stating that the date of synchronisation will be commercial operation date for non-conventional energy projects, the date of synchronization of the first generating unit of the Appellant i.e. 13.1.2003 will be the Commercial Operation Date.*

b) *Further, in view of the order of the State Commission dated 20.6.2001, prohibiting third*

party sale, there was no other option for the Appellant except to supply power to APTRANCO. The Appellant has used only bagasse as fuel for production of electricity which being a biomass should be considered as nonconventional source of energy.

c) For the period under dispute, the tariff decided by the State Commission for all types of non-conventional energy sources was based on MNES guidelines taking base price of Rs.2.25 per unit with 1994-95 as the base year with escalation at 5% per annum up to FY 2003-04. The Appellant is, therefore, entitled to the same tariff as applicable to non-conventional source of energy in the State.

d) Accordingly, the Appellant is entitled to a tariff of Rs.3.32 per unit for the period 13.1.2003 to 31.3.2003 and at Rs.3.48 per unit for the period 1.4.2003 to 21.1.2004. Accordingly, APTRANSCO is directed to make the payment to the Appellant on account of difference between the above tariff and the tariff at which the payment has already been made along with simple interest at the rate of 10% per annum.

44. Before parting with this case, we shall record our disapproval over the impugned order, which reflects non application of mind and the violation of the direction issued by the Hon'ble Supreme Court. We hope, the State Commission will correct this sort of serious mistakes at least in the future.

> *Accordingly, the Appeal is allowed and the impugned order dated 27.8.2012 passed by the State Commission is set aside. APTRANSCO is directed to pay for the energy supplied by the Appellant from 13.1.2003 to 21.4.2004 at the rates directed in this judgment. APTRANSCO shall pay the balance amount due to the Appellant along with simple interest calculated at the rate of 10% per annum within one month of receipt of a copy of this judgment. Registry is directed to send a copy of the Judgment to Andhra Pradesh State Commission forthwith."*

41. M/s. SNJ Sugars and Products Limited filed execution Petition No.1 of 2017 for execution of the Judgment, so also the Order dated 04.02.2013 passed by this Tribunal. After hearing the parties, this Tribunal passed the following Order:

> *"12. This judgment of this Tribunal dated 04/02/2013 will have to be implemented. Pertinently, it is confirmed by the Supreme Court. It is therefore necessary to dispose of the present petition by directing the State Commission to calculate the exact amount due to the Petitioner as per judgment dated 04/02/2013. On such amount being calculated, 1st Respondent APTRANSCO will have to pay the said amount to the Petitioner without any loss of time. As already noted some submissions were advanced on behalf of APTRANSCO on quantification of the amount. They were rebutted by the Petitioner's counsel. We do not want to go into those submissions. The State Commission will consider them. But the judgment of this Tribunal dated 04/02/2013, particularly its*

operative direction dated 04/02/2013 is clear and unambiguous. The State Commission shall discourage any attempt to create ambiguity. Concluded issues cannot b reopened. Another round of litigation must not be started. That will violate the sanctity of this Tribunal's judgment dated 04/02/2013, which is confirmed by the Supreme Court. This must be borne in mind by the parties.

13. In the circumstances we remand the matter to the State Commission only for the purpose of calculating the amount due to the Petitioner as per the judgment of this Tribunal dated 04/02/2013. The State Commission shall complete the entire exercise after hearing the parties within a period of two months from the date of receipt of this order. Parties shall cooperate and assist the State Commission by producing necessary documents if required. Needless to say that amount already paid to the Petitioner pursuant to our order dated 09/02/2017 will be taken into account while deciding the final liability of APTRANSCO. On the amount being quantified APTRANSCO shall pay it immediately without any demur within a period of three weeks from the date of the State Commission's decision. Liberty to both sides to approach this Tribunal if circumstances so demand."

42. By virtue of the above said Order dated 31.05.2017 in Execution Petition, the State Commission has to calculate exact amount due to the Petitioner in terms of the Judgment in Appeal No. 228 of 2012 dated 04.02.2013. In terms of directions of this Tribunal in the Execution Petition, the present impugned order dated 03.11.2017 is passed by the

APERC. Prior to this, judgment dated 31.05.2017 in EP No.1 of 2017 was challenged in the Hon'ble Supreme Court, but the Apex Court confirmed the said Orders of this Tribunal dated 31.05.2017 in EP No. 1 of 2017. Therefore, contention of the APTRANSCO that they have lesser liability due to events after the reorganization of the State was finally concluded by the Judgement of the Hon'ble Supreme Court. The State Commission is also justified in opining that the Respondent-APTRANSCO before them, picking up Paragraphs here and there from the Judgment of the Tribunal, cannot be entertained, since the entire Order has become final and must be read as a whole and should be given effect to. Ultimately, it concluded that even during the relevant period when the sugar plant was not commissioned, APTRANSCO have to pay for whatever energy that was supplied to them by M/s. SNJ Sugars at the rate specified in the Judgment dated 04.02.2013 of the Tribunal i.e., at Rs.3.32 per unit for the period 13.1.2003 to 31.3.2003 and at Rs.3.48 per unit for the period 1.4.2003 to 21.1.2004.

43. So far as quantum of power supplied during the relevant period as observed by the Commission, there is no dispute. There was joint meter reading, invoices and payments verified and taken into consideration by the APERC. Therefore, there seems to be no dispute pertaining to number of units of power supplied and the price at which the total sum has

to be determined. It is also not in dispute, as ad-hoc arrangement certain amounts were directed to be paid to M/s SNJ Sugars and Private Limited, the principal amount has to be arrived at in terms of Para 44 of the Judgment dated 04.02.2013 and the balance amount payable carries a simple interest at the rate of 10% per annum. In terms of the Judgment dated 04.02.2013, the balance amount along with interest had to be paid within one month from the date of receipt of copy of the Judgment. Apparently, it does not say from what date the interest has to be paid.

44. On perusal of the entire Judgment dated 04.02.2013, nowhere it discusses or appreciates the fact that the balance amount i.e., difference of amount now to be paid after fixing the tariff as stated above would carry interest from such and such date i.e. any date prior to 04.02.2013. Neither in the Judgment of the Apex Court passed on 13.10.2011, which gave rise to the present impugned order ultimately, nor while disposing of the Appeal filed against the Orders of this Tribunal dated 04.02.2013 in Appeal No. 228 of 2012, it had observed that interest has to be paid from a particular date. It only directed to determine the price of power supplied during the period between 13.01.2003 to 21.01.2004. They also opined that after determination of price made by the APERC, balance amounts, if any, will be made by Respondent No.1 to the Appellant.

45. For the first time, payment of interest as a direction came to be made in the Judgment dated 04.02.2013. As already stated, this was also challenged in Civil Appeal No. 6754 of 2013 before the Hon'ble Supreme Court and the same came to be dismissed on 12.07.2013. Even the Review Petition No. 3235 of 2016 came to be dismissed on 04.10.2016. Therefore, the direction to pay difference of amount between the determined tariff and the amount (ad-hoc) at which the payment was already made has to be paid along with simple interest at the rate of 10% per annum was not modified or altered.

46. Various contentions came to be raised by the Appellant that the impugned order is contrary to various orders of High Court, Hon'ble Supreme Court, and the Tribunal between the parties so also the PPA, but the same cannot be gone into, since all such contentions raised were decided by one forum or the other and have reached finality.

47. The only challenge that could be raised by the Appellant is whether the calculations made by the APERC are in accordance with law and the direction of this Tribunal.

48. As a preliminary objection, the Respondent-Generator did raise objection contending that the Appeal is not maintainable. This Tribunal in

EP No.1 of 2017 on 31.05.2017 opined that the State Commission shall discourage any attempt to create ambiguity and it shall not entertain reopening of concluded issues. Further, it said that another round of litigation must not be started since it would violate the sanctity of the Order of the Tribunal dated 04.02.2013 which got the seal of approval at the hands of the Hon'ble Apex Court.

49. Since the Hon'ble Supreme Court confirmed the said Judgment dated 04.02.2013 dismissing the Civil Appeal filed by the Appellants, this Tribunal directed that the State Commission shall complete the entire exercise as indicated in the Judgment dated 04.02.2013, after hearing the parties, within a period of two months from the date of receipt of copy of the Order. It also said that the amounts already paid must be taken into account once the amounts are quantified, and APTRANSCO shall pay the said determined amount without any demur within a period of three weeks from the date of the State Commission's order. Therefore, hearing of the parties and then proceed to quantify the amount would mean both the parties could argue on the issue of quantification placing on record their respective stands. But, it did not mean that the State Commission could entertain all grounds of disputed issues which had reached finality. Since at the direction of this Tribunal, the impugned order came to be passed, if one of the parties to the proceedings before APERC is aggrieved, they are

entitled to file the present Appeal since they come within the definition of aggrieved party as contemplated under the Act.

50. Then coming to the quantification, the Respondent-Commission proceeded to quantify the amounts in the impugned order dated 03.11.2017 at Para 16 and 17 as under:

> *"16. This Commission in adjudicating the execution proceedings cannot go behind or beyond the judgment and decree of the Hon'ble Appellate Tribunal for Electricity confirmed by the Hon'ble Supreme Court and has to act in faithful compliance of the same. As directed by the Hon'ble Appellate Tribunal for Electricity in its directions dated 31-05-2017, this Commission shall not reopen any concluded issues. With this background and for the reasons stated, the principal sum as claimed by the petitioner and as admitted by the respondents has to be paid with simple interest at the rate of 10% per annum from the respective due dates till one month of receipt of copy of the judgment by the petitioner. The date of receipt of copy of the judgment by the petitioner is claimed to be 08-02-2013. Hence, interest becomes payable upto and including 08-03-2013."*

> *"17. Accordingly, the principal sum due for FY 2002-03 will be Rs.52,72,470/- and interest from the respective due dates upto 08-03-2013 will be Rs.1,49,65,146/-, making a total of Rs.2,02,37,616/-. In respect of FY 2003-04, the principal sum due will be Rs.6,84,32,795/- and interest from the respective due dates upto 08-03-2013 will be Rs.8,60,83,402/- making a total of*

Rs.15,45,16,197/-. The total amount payable for the period and quantum of energy supplied during the said two years is therefore Rs.17,47,53,813/-. The amount paid by the respondents on 23-02-2017 and 16-03-2017 put together is Rs.3,63,34,680/- which has to be deducted from the above amount, leaving a balance of Rs.13,84,19,133/-. This sum has to be paid by the respondents within three (3) weeks from today according to the directions of the Hon'ble Appellate Tribunal for Electricity dated 31-05-2017."

51. Section 34 of *The Code of Civil Procedure* reads as under:

"34. Interest— (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

[Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation I.—In this sub-section, "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

Explanation II.—For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.]

(2) Where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie."

52. Apparently, amounts paid to the Respondent-Generator by the Appellant during pendency of several proceedings before different forums were on adhoc basis. Only after the direction of the Hon'ble Apex Court, directing the Respondent-Commission to determine the price of power supplied during the relevant period as stated above, APTRANSCO was to make payments. In this direction as stated above, the question of interest never came up. It was only a direction to determine the price of power supplied during the above said period. Thereafter as stated above, the Commission passed certain orders pertaining to the said period, before the sugar plant had commenced sugar production. Pursuant to this direction, on 27.08.2012, 1st Respondent-APERC fixed the price at Rs.0.92 per unit for the period between 13.01.2003 to 31.03.2003 and Rs.0.97 per unit for

the period between 01.04.2003 to 20.01.2004. The Tribunal on 04.02.2013, determined the price to be paid for supply of power for the above stated periods by enhancing the price fixed by APTRANSCO and then directed for payment of simple interest as well on such difference of amount.

53. The question of dues of amount payable by APTRANSCO would become due only when it was determined by this Tribunal which was confirmed by the Hon'ble Apex Court by its judgment dated 12.07.2013. In terms of Section 34, if we look at the Judgment dated 04.02.2013, the Tribunal did not refer to payment of interest prior to 04.02.2013. It only referred to payment of interest on the difference of amount as indicated in the Judgment. Therefore, in terms of Section 34 of the Code of Civil Procedure, the interest ought to be paid is only from 04.02.2013 when the amount got quantified or determined as price per unit for power supplied during the above stated period was determined. Since the transaction between the parties is a commercial transaction, the said simple interest of 10% has to be paid till payments are made.

54. Since number of units of power supplied is not in dispute, so also number of days and the unit price for two different periods is finally determined, APERC is directed to calculate the same in the light of our

observations made above within a month from the date of receipt of copy of this Order and the Appellant-APTRANSCO shall pay the said amount within two months from the date of quantifying the amounts by APERC by its order.

55. For the reasons stated above, we dispose of the Appeal. Accordingly, pending IAs, if any, shall stand disposed of. So also EP is disposed of.

56. No order as to costs.

57. Pronounced in the Open Court on this **the 12th day of March, 2020**.

(S.D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd