

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)**

**Appeal No. 65 of 2020**

**Dated: 25<sup>th</sup> February , 2020**

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

**Kamal Encon Industries Limited  
Through its Authorized Representative,  
56, Industrial Estate,  
Yamuna Nagar - 135001**

**....Appellant**

**VERSUS**

**1. Maharashtra Electricity Regulatory  
Commission  
Through its Secretary  
World Trade Centre, Centre No. 1,  
13<sup>th</sup> Floor, Cuffe Parade,  
Mumbai – 400005**

**...Respondent No.1**

**2. Maharashtra State Electricity  
Distribution Co. Ltd.  
Through its Managing Director  
Plot No. G-9, 5<sup>th</sup> Floor, Prakashgad,  
Anant Kanekar Marg, Bandra (East),  
Mumbai – 400051**

**...Respondent No.2**

**3. Maharashtra State Electricity  
Transmission Co. Ltd.  
Through its Chairman & Managing  
Director  
'Prakashganga', MSETCL,  
Plot No. C-19, E-Block,  
Bandra Kurla Complex,  
Bandra (East), Mumbai - 400051**

**...Respondent No.3**

**Counsel for the Appellant(s) : Mr. Anand K. Ganesan  
Ms. Swapna Seshadri  
Mr. Amal Nair  
Mr. Ashwin Ramanathan**

**Counsel for the Respondent(s) : Mr.Rahul Chouhan  
Mr.Shashwat Kumar  
Mr.Naman Mittal For Res2**

**Mr.Akshay Arora  
Ms.Praval Arora  
Mr.Chesta Mehta Arora  
Mr.Shivi Sanyam  
Ms.Pratishtha vij  
Mr.Jappanpreet Hora for Res3**

### **JUDGEMENT (ORAL)**

1. The Appellant has been supplying energy generated from its wind power plant located at Bramanvel in Dhule District Maharashtra, through a 33 kV common feeder to 132/33 kV substation at Sakri.
2. Besides the Appellant, there are twelve other wind power generators which are connected on this 33 kV common feeder and supplying power to Respondent No.2 (Discom).

3. This arrangement of power supply from the Appellant to the Discom has been with effect from 2006 and the Power Purchase Agreement (“PPA”) is coming to an end on 29.02.2020.
4. The Appellant realizing that the Power Purchase Agreement is coming to an end decided to seek open access and supply power to its own works located in Haryana. Accordingly, the Appellant applied for seeking open access to the Respondent No.3, i.e. State Transmission Company which is the nodal agency for giving No Objection Certificate (“NOC”).
5. As Transmission Company was taking inordinately long time in processing the application of NOC and there were issues regarding the payment for energy supplied by them to the Discom, the Appellant filed a petition being Petition No. 260 of 2019 dated 29.09.2019 before the State Commission/the Respondent No.1.
6. Just one day before the hearing, the Discom paid the long pending dues to the Appellant and the transmission company, which is the nodal agency for giving NOC, also gave revised NOC but with the following two additional conditions:

7. Installation of Supply Energy Meter (SEM)
8. Construction of a separate feeder connecting the generator and the pooling station.
9. These two conditions were raised by the transmission company with reference to the Regulations notified by the State Commission from time to time.
10. The State Commission passed the impugned order short shrifting the objection of the appellant. Aggrieved by the impugned order dated 14.11.2019, the Appellant has filed the instant appeal.
11. The matter was heard at length wherein the parties have made detailed submissions on the subject.
12. While the Appellant agrees to the condition of SEM being added, its grievance relates essentially to the insistence, in the revised NOC, on a direct feeder to be arranged which the Appellant submits is wholly unnecessary, in as much as there is sufficient arrangement already in position for energy accounting to be taken care of, the requirement of a separate dedicated feeder up to the pooling station

being onerous, resulting in wastage of expenditure particularly against the backdrop wherein the Approach Paper leading to the framing of the relevant Regulations also conceiving it as a transient provision.

13. The learned counsel for the Transmission Company/the Respondent No.3 defended the decision taken by the State Commission referring in this context, to the Approach Paper which was put in public domain on 28.02.2018 and was followed by the Regulations for forecasting and scheduling being notified, an explanatory note (Para 31.3) also being added in the Statement of Reasons (“SOR”) to the said Regulation, the same having crystallized in the form of Regulation no.8.2 which necessarily requires the generator to be “connected through its separate feeder” to the pooling substation for Inter-State transactions.
14. After some hearing, the learned counsel for the Appellant submitted that the State Commission has glossed over the alternative prayer of the Appellant for relaxation to be considered *vis-a-vis* such onerous condition in respect of the case of the Appellant, there being virtually no opportunity available for such alternative prayer to be pressed at the final hearing when the impugned order was

passed by the State Commission. She submitted that the appeal is pressed with a limited prayer for liberty to be granted to the Appellant to approach the State Commission by a review petition so as to seek consideration of its alternative prayer of relaxation under the Regulations so as to relieve it of the rigor of such condition as to separate feeder, it being a small capacity wind generator, the expenditure required to be incurred being in excess of the cost of the project itself.

15. The learned counsel also submitted that if such liberty as mentioned above for moving review application were to be allowed, the Appellant would also be making an application before the State Commission for some interim relief *qua* the Energy Supply Agreement which is coming to an end in near future.
16. The learned counsel for the Respondents, on being asked, submitted that they leave the matter to this Tribunal in so far as the limited prayer for liberty to be granted for review application to be moved is concerned.
17. Given the background facts, as noted above, we grant the liberty as is sought to the Appellant though making it clear, for removal of

doubts if any, that by granting such liberty, we are not to be construed having expressed any opinion on the issues either way. The review petition for which liberty has been granted may be filed within two weeks hereof.

18. The appeal and pending applications are 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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