

**THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**APPEAL NO. 9 OF 2019 &
IA Nos. 1667, 1668 OF 2018 & IA Nos. 364, 548, 1013 OF 2019**

Dated: 8th January, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:-

M/s. Aavanti Solar Energy Private Limited
A Company registered Under the
Companies Act, 1956/2013
Having its registered office
At "Temple Steps" 3rd Floor, Block No. A,
Unit-B 184-187, Anna Salai, Little Mount,
Chennai-600015
Represented by its Director

Appellant

Versus

1. Gulbarga Electricity Supply Company Limited,
A Company incorporated
Under the Companies Act, 1956,
Having its registered office at Station Road, Kalaburgi,
Represented by its Director

2. The Karnataka Renewable Energy Development Limited
No. 39, "Shanthigruha",
Bharath Scouts and Guides Building,
Palace Road, Bangalore – 560001
Represented by its Managing Director

3. Karnataka Power Transmission Corporation Limited,
Incorporated under Companies Act, 1956

Having its registered office at
Kaveri Bhavan,
Bangalore-560001

4. The Karnataka Electricity Regulatory Commission
Through its Secretary
No. 16, C-1, Millers Tank Bed Area, Vasant Nagar,
Bengaluru-560 052

Counsel for the Appellant(s) : Mr. Ashish Yadav
Mr. Prerna Priyadarshini
Mr. Ralsjot Kaom
Mr. Kush Chaturvedi

Counsel for the Respondent(s): Mr. Nithin Saravanan for R.1 & 2

JUDGMENT

(PER HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON)

Heard learned Senior Counsel Mr. Basava Prabhu Patil arguing for the Appellant and also learned counsel for the Respondents.

The limited issue involved in this appeal is as under:

The Appellant entered into Power Purchase Agreement ("PPA") with Respondent No.1-Gulbarga Electricity Supply Company Limited/GESCOM for sale of 20 MW of power from its Solar PV ground mount Project situated at Shiggaon Taluk, Haveri District of Karnataka State. The effective date in terms of PPA is the date when PPA comes into effect i.e., 25.05.2016. However, according to the 4th

Respondent-Commission since the project was commissioned beyond the scheduled date in terms of PPA, liquidated damages were to be paid by the Appellant. By virtue of impugned order dated 18.09.2018, liquidated damages were to be deducted after notice. The contention of the Appellant before this Tribunal is since the Supplementary Agreement came to be entered now between the parties on 24.08.2017, the effective date has to be calculated for all purposes as 24.08.2017.

When this appeal came to be listed on 30.11.2018 at DFR stage, following order was made by this Tribunal.

“....

Heard the learned senior counsel for the appellant as well as the respondents. The Impugned Order is dated 18.09.2018 where liquidated damages are directed to be deducted after notice. Apparently in terms of order dated 29.06.2016 KERC directed modifications in terms of page 92 whereby the parties had to enter into suitable supplementary PPA incorporating the modifications. Such supplementary PPA came to be entered into on 24.08.2017. In fact in terms of order dated 21.08.2018 there was an order to pay 4.36 per unit as interim tariff.

In terms of 3.1 of PPA and 8.5 PPA, the agreement will come into effect from the date of getting concurrence from KERC on the PPA and same shall be referred as the effective date and in terms of 8.5 the developer is required to commission the project within 12 months from effective date. Under these circumstances prima facie we are of the opinion that the project was commissioned within 12 months from the effective date. However, the respondents are at liberty to file objections

bringing on record the facts which represent otherwise. Meanwhile the respondents shall not deduct liquidated damages if they are assessed after notice.

Liberty to mention is reserved to the respondents to mention.....”

Again on 22.05.2019, this Tribunal passed the following order:

“....

We have heard both the parties. Reply of Respondent Discom placed on record, the statement showing the details of bill amount and as to how they have adjusted (deducted) the same against LD charges. From the statement we know that they have arrived at total LD charges of 15 crores. But to arrive at this amount, how they have calculated the same and from what date and at what rate is not forthcoming, though, the learned counsel for Respondent Discoms says that it was generally in terms of Article 8.5 of the PPA.

2. However, learned Sr. Counsel, Mr. Prabhulinga Navadgi, arguing for the Appellant submits that at no point of time till the statement now placed on record, Respondent Discom informed the Appellant that monthly energy charges were deducted towards LD amount and inspite of 3 orders of the Court, now for the first time, the Respondent Discom is coming up with the explanation of monthly charges being deducted towards LD amount. Though, Counsels for Respondents submit that there was a direction by the Commission to them at the time of approval of supplementary PPA to charge LD charges, on 16.11.2017, nothing is placed on record. It is not clear whether such directions of the Commission is in the form of a letter was intimated to Appellant herein when the first energy bill was raised in the month of April, 2018. If they have intimated to the Appellant, the Respondent Discom should place such information on record.

3. We note from the records that first time when we directed Respondent

Discom not to deduct LD charges, on 30.11.2018, there was no directions to deduct LD charges from monthly bills. However at this point of time, it was BESCO who was a party to the proceedings and not GESCOM. Subsequently on 01.02.2019, the correct name of the Discom was brought on record. Such mistake occurred, since KERC order itself mentioned wrong Discom, i.e. BESCO instead of GESCOM. However, from 01.02.2019 onwards, it was GESCOM, who is representing the Distribution Licensee.

4. On 25.03.2019, again when GESCOM appeared, we directed GESCOM to pay monthly charges as directed in the order dated 01.02.2019. From the statement, we note that from February, 2019 onwards, bills were paid but we do not have any calculation at what rate the unit of energy was paid. It is still to be furnished.

5. In the light of the above facts and circumstances, we direct Respondent discom to place on record the correspondence intimating the Appellant that they were deducting the LD amount from monthly charges from April, 2018 onwards.

6. Now, Senior counsel arguing for the Appellant categorically states that at no point of time such action of the Respondent Discom was intimated to the Appellant.

7. In the Order dated 30.11.2018, we were of the opinion that scheduled date of commissioning the project was complied with by the Appellant and therefore the amount towards energy charges shall be paid. We direct the Respondent Discom to pay monthly charges at Rs. 5.06 paisa per KWH and not Rs. 4.36 paisa per KWH subject to outcome of appeal.

8. We direct the Managing Director of GESCOM to read this Order and file affidavit explaining the stand of the GESCOM by 4th July, 2019. Meanwhile, Respondents shall file reply, if any, with advance copy to the Appellant, who shall file rejoinder within two weeks thereafter after serving copy on the other side.

.....”

Challenging the interim order dated 22.05.2019, Respondent No.1-GESCOM filed Civil Appeal bearing No. 5903 - 5904 of 2019 before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court passed the following order on 26.07.2019.

“Delay condoned.

With the consent of the learned counsel for the parties, we pass final orders in the appeal(s).

The interim order of the Appellate Tribunal for Electricity which is under challenge in the present appeal(s), stands modified by permitting the appellant to pay monthly charges at the rate of Rs.4.36 p.per KWH instead of Rs.5.06 per KWH, subject to furnishing of a Bank Guarantee for the balance amount, i.e., Rs.5.06 P.-Rs.4.36 p. = Rs.0.70 per KWH.

The Bank Guarantee to be submitted will be on monthly basis and to be furnished within two weeks of the expiry of one calendar month....”

As on today the liquidated damages are not deducted. The fact remains main Original Petition bearing No. 232 of 2017 is still pending for consideration before the 4th Respondent-Commission.

Apparently, the Commission has to apply its mind to the terms and conditions with regard to effective date of PPA of the power plant in question. Accordingly, we dispose of the appeal as under:

The Appeal is disposed of with a direction to the 4th Respondent-Commission to dispose of O.P. No. 232 of 2017 pending before it

without being influenced by any of our observations including *prima facie* opinion with regard to the effective date of PPA.

However, in terms of directions of this Tribunal dated 30.11.2018, the Respondent-GESCOM shall make payments as and when bills are raised by the Appellant without deducting liquidated damages till disposal of the Petition pending before the Commission. All contentions of both the parties are kept open. All the IAs, which are pending as on today are disposed of as infructuous. There shall be no order as to costs.

Pronounced in the open court on this the 8th day of January 2020.

Ravindra Kumar Verma
[Technical Member]

Justice Manjula Chellur
[Chairperson]

Dated: 08th January, 2020

REPORTABLE/~~NON-REPORTABLE~~

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