

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

Appeal No. 20 of 2020 & IA No. 2213 of 2019

Dated: 13th March , 2020

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

**West Bengal State Electricity Distribution
Company Limited
Through its Authorized Signatory
Vidyut Bhawan, Block – DJ,
7th Floor, Sector II, Salt Lake,
Kolkata – 700 091**

....Appellant

Versus

**1. Central Electricity Regulatory Commission
Through its Secretary
3rd & 4th Floor, Chanderlok Building
36, Janpath, New Delhi – 110 001**

...Respondent No.1

**2. Damodar Valley Corporation
Through its Chairman
Damodar Towers, VIP Road
Kolkata (W.B.) – 700 054**

...Respondent No.2

Counsel for the Appellant(s)

**: Mr. Amit Kapur
Mr. Vishrov Mukerjee
Mr. Rohit Venkat V.
Ms.Raveena Dhamija
Mr. Yashaswi Kant
Mr. Ameya Vikram Mishra
Mr. Girik Bhalla
Mr.Pratyush Singh**

**Counsel for the Respondent(s) : Mr. M.G. Ramachandran, Sr. Adv.
Ms.Ranjitha Ramachandran
Ms.Poorva Saigal,
Ms.Anushree Bardhan
Mr. Shubham Arya
Mr. Arvind Kumar Dubey
Mr. Tanya Sareen for Res.2**

ORDER (ORAL)

PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER

1. The Appellant West Bengal State Electricity Distribution Company (WBSEDCL) has come up with the present appeal challenging the order dated 01.11.2019 of Central Electricity Regulatory Commission (the Central Commission) in Petition No. 298/MP/2018 which had been instituted by the Respondent Damodar Valley Corporation (DVC) seeking declaration as to right to recover a sum aggregating Rs.111,74,47,434 Crores towards principal and delayed payment surcharge at the rate of 1.5% per month as on 31.08.2019 along with further interest till payment. It appears that the Appellant had resisted the claim by raising the issue of limitation pleading that the

petition of DVC could not be entertained, it being time barred.

2. The Central Commission, by the impugned order, appears to have rejected the above said objection and also considered the prayer of DVC on merits and issued directions to that effect, treating the objection giving rise to mixed issue of facts and law. The prime contention raised by the Appellant at this stage in the present appeal is that the contentions *vis-à-vis* the issue of limitation have not been properly examined or adjudicated upon, the view taken on merits having guided the conclusion on issue of claim being time-barred.
3. During the course of hearing, a suggestion came up that the matter to the extent it requires consideration and clear adjudication on the question of limitation be remitted to the Central Commission, the findings on merits as rendered by the impugned order dated 01.11.2019 to be presently kept on hold, reserving the right for the appellant to bring a fresh appeal there-against in the event of the Central

Commission reiterating its conclusion on the question of limitation. Both sides took adjournment to seek further instructions.

4. The learned counsel on both sides have submitted before us today that they are agreeable to such disposal as above of the instant appeal.
5. On the foregoing facts, and in the circumstances, and with the consent of both sides, the issue of limitation raised by the Appellant *vis-à-vis* the claim of DVC in Petition No. 298/MP/2018 brought before the Central Commission is remitted for fresh consideration and decision by the said forum, to be rendered after hearing both parties. Needless to add that the contentions of both sides in such regard are kept open and shall be considered and adjudicated upon comprehensively by the Central Commission in the fresh order that is expected to be passed. It is desirable that the said issue is adjudicated upon, in terms of this remit, at the earliest in as much as the decision on merits of the claim, as rendered by the order dated 01.11.2019, would be open

for fresh challenge by appeal, if the Appellant so desires, after decision in the event of adverse decision being rendered on its objection of limitation, such fresh challenge, of course, to be brought within the period of limitation calculated from the date of fresh decision by the Commission. The Respondents assure that the bills which have been presented to the Appellant in the wake of the impugned decision will not be pressed for payment, or recovery, till the issue of limitation is decided upon by the Central Commission in terms of the remit order, this being without prejudice to its rights and contentions.

6. The parties are directed to appear before the Central Commission for further proceedings in light of above directions on 14.04.2020.
7. The appeal and applications are disposed of in above terms. Copy of order be given *dasti* to both sides.

(Justice R.K. Gauba)
Judicial Member
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(Ravindra Kumar Verma)
Technical Member