

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Appeal No. 56 of 2020 &
IA No. 112 of 2020, IA No. 111 of 2020,
IA No. 295 of 2020, IA No. 534 of 2020,
IA No. 1220 of 2020 & IA No. 1509 of 2020

Dated: 4th February, 2021

Present: Hon'ble Mr. Ravindra Kumar Verma, Technical Member
Hon'ble Mr. Justice R.K. Gauba, Judicial Member

In the matter of:

D.B. Power Ltd.
Having its registered office at:
Office Block 1A, 5th Floor,
Corporate Block, DB City Park,
DB City, Arera Hills,
Opposite MP Nagar, Zone-I,
Bhopal-462016

.... Appellant(s)

Versus

1. Central Electricity Regulatory Commission
3 rd & 4 th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001
Through its Secretary

.... Respondent No.1

2. Tamil Nadu Generation and Distribution
Corporation Ltd.
6th Floor, Eastern Wing
144, Anna Salai, Chennai- 600 002
Tamil Nadu
Through its Chief Engineer

.... Respondent No.2

**Counsel for the Appellant (s) : Mr. Deepak Khurana
Mr. Abhishek Bansal
Ms. Nishtha Wadhwa
Mr. Tejasv Anand
Mr. Vineet Tayal**

**Counsel for the Respondent (s) : Mr. Balaji Srinivasan, AAG for
State of Tamil Nadu
Mr. B. Vinodh Kanna for R-2
Mr. Aromda, Ghosh
Mr. S. Vallinayagam
Mr. Kamalanathan M.**

ORDER

PER HON'BLE MR. JUSTICE R.K. GAUBA (ORAL)

This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

1 This appeal is directed against the order dated 08.01.2020 passed by the first Respondent i.e. Central Electricity Regulatory Commission ("Central Commission" or "the Commission") in case registered as Petition No. 22/MP/209 which was instituted by the Appellant D.B. Power Limited (hereinafter referred to as "the Appellant"), it being directed against the second Respondent i.e. Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as the "TANGEDCO"). The Appellant is a generator of electricity it having entered into a contractual arrangement with TANGEDCO whereunder the later would procure electricity against terms settled under Section 63 of the Electricity Act, 2003. It appears that there was default in timely payments and this led to a claim for Late Payment Surcharge.

The dispute arising out of the non-payment of Late Payment Surcharge became the subject matter of the proceedings before the Central Commission eventually culminating in order dated 08.01.2020 which is under challenge by the Appeal at hand. The Central Commission called upon the second Respondent to submit its response which was not furnished. The Central Commission thereafter considered the matter noting that the claim of pending dues towards Late Payment Surcharge was in the sum of Rs.95,99,76,788.87 for period 01.08.2015 to 31.12.2018. It is noted that the quantum of the claim was not questioned. The Central Commission eventually passed the order, the operative part whereof reads as under: -

“11. Accordingly, Respondent is directed to pay the remaining amount under Late Payment Surcharge claimed by the Petitioner within three month from the date of issue of this order, after reconciliation of bills with the Petitioner. However, with regard to Petitioner's prayer for directing the Respondent to pay the Late Payment Surcharge along with interest @18%, it is held that interest on non-paid Late Payment Surcharge is covered by the provisions of PPA as quoted above which takes care of compounding on monthly basis at the rate of SBI-PLR as quoted in PPA. Further, on repeated default of payment by the Respondent, Petitioner has the option to regulate the power of the Respondent in terms of CERC (Regulation of Power Supply) Regulations, 2010.”

2. The short grievances with which the Appellant approached us by the present appeal are that it was improper on the part of the Central Commission to grant further three months' time for the liability to be discharged and, more importantly, it being made conditional upon *"reconciliation of bills with the Petitioner"*. In spite of notice no formal reply had been filed by the Respondent TANGEDCO before the Commission. It may, therefore, be observed that correctness of the computation of the claim of Late Payment Surcharge for the aforementioned period was, strictly speaking, not in dispute. It may be added that during the pendency of the matter before the Central Commission some payments were made which were duly accounted for.

3. It would be appropriate at this stage to take note of some of the orders which were passed by us during the pendency of this appeal, to the extent relevant. On 13.03.2020, we recorded as under:-

"1. We have heard learned senior counsel Mr. Sajan Poovayya for the Appellant.

2. The appeal taking exception to observations recorded by the Central Commission while granting relief, as prayed for by the Petitioner (a generating company), in Petition No. 22/MP/2019 against second Respondent Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) by order dated 08.01.2020 came up before

us on 28.01.2020. It appears from the impugned order itself that the Respondent TANGEDCO is in default of payment of Late Payment Surcharge amounting to Rs. 95,99,76,788.87 for the period 01.08.2015 to 31.12.2018.

The impugned order further shows prima facie that the liability towards such Late Payment Surcharge was not disputed, the only explanation tendered being that the Respondent TANGEDCO was unable to pay “due to financial crunch”, it instead requesting for “waiver”. Though it appears that the Respondent TANGEDCO did pay Rs. 20 Crores, on account, pursuant to directions of the Central Commission by order dated 07.05.2019, the remainder has been left to continue as outstanding, it leading to a direction by final orders for its payment, the Central Commission qualifying the said direction by adding it to be done “after reconciliation of bills with the Petitioner”.

3. The Appellant’s is lament is that the Respondent has neither come forward for any reconciliation nor was it necessary to do so, given the admission of the computation of Late Payment Surcharge which was the subject matter of the claim. The Appellant is also aggrieved for the reason that the direction for payment by order dated 08.01.2020 has remained uncomplied, the Respondent TANGEDCO adopting the posture of stoic silence.

4. *By order dated 28.01.2020, we had issued notice on the main appeal as well as the interim applications. The notice has been duly served on TANGEDCO but it has failed to appear. The proceedings recorded by the Registrar, to whom the matter was made over for such purpose, on 13.02.2020, 27.02.2020 and 05.03.2020 reveal total lack of interest or participation by Respondent TANGEDCO.*

5. *We are surprised to note that the Respondent TANGEDCO, a Company of the State of Tamil Nadu, chooses to indulge in such conduct in such unresponsive manner.*

6. *Given the submissions of the learned counsel for the Appellant that it faces financial stress, we deem it just and proper to list the matter for final hearing, in the event of the Respondent TANGEDCO failing to appear or respond till next date, on 27.03.2020.*

7. *By abundant caution, we further direct that the Appellant shall serve a copy of this order on the Respondent TANGEDCO. Copy of order be given dasti to the Appellant.”*

4. The effective hearing next took place on 03.06.2020 when it was recorded thus:-

“ This appeal had come up before us on 13.03.2020. In the proceedings recorded by us on that date we had inter-alia noted that the second Respondent/Tamil Nadu Generation

and Distribution Corporation Limited (TANGEDCO), in spite of due service, had failed to appear or participate. We had noted briefly the background facts and the grievance of the appellant and listed the matter for final hearing on 27.03.2020. On account of the lockdown imposed in the meanwhile, the matter could not be taken up for hearing in the Court. The Tribunal has later started taking up the matters by video conferencing mode. Referring to the urgency involved in the matter, the appellant has come up with the present application (IA No. 534 of 2020 – for early hearing), seeking essentially preponement of the hearing which is otherwise fixed for 28.08.2020.

Since by our Order dated 13.03.2020, we had called upon the appellant to serve a copy of the said order on the second respondent/TANGEDCO, we put certain questions to the counsel for the appellant in this regard. From his submission and the documents he has filed with the application for urgent hearing we find that the above said direction has been duly complied with, copy of the said order having been sent by the appellant to the authorized representative of the respondent/TANGEDCO by communication dated 19.03.2020 by speed post as well as by e-mail. The learned counsel for the appellant clarified that the email ID for the Chief Engineer (Private Power Project) has been used for the said communication in terms of Clause 15.12.2 of the Power Purchase Agreement (PPA) dated 19.08.2013. Upon inquiry, he further submitted that the said email had reached the

addressee in as much as they have not received any bounced back notification. We shall expect the appellant to say so on affidavit to be furnished well in time before the next date of hearing. We are informed by the Registry that respondent/TANGEDCO is a party in several appeals before this Tribunal and has been ordinarily using two different email IDs i.e. seldrecrpo@tnebnet.org and cfcrev@tnebnet.org. These email IDs shall also be used by the appellant, by abundant caution, for further correspondence with the respondent/TANGEDCO.

A peculiar situation prevails. TANGEDCO/Distribution Company, operating in the State of Tamil Nadu is keeping itself away from these proceedings despite due notice. In all fairness, it is necessary to ensure before proceeding further that its presence is secured so that we are not constrained to pass any ex-parte order. Upon inquiry, we are informed by the Registry that TANGEDCO would be appearing as an appellant in the Appeal No. 102 of 2020 listed before us by video conferencing on 08.06.2020. In order to secure the presence of the said party, we direct that this appeal be listed on the same date to be taken up for hearing first on the prayer for urgent hearing.

The Registry shall send a fresh communication by email to the respondent/TANGEDCO not only at the email IDs made available by it but also at the email ID reflected in the PPA filed by the appellant. The appellant, in the meanwhile, shall

also serve copy of this order on the respondent / TANGEDCO calling it upon to participate in the hearing on 08.06.2020.”

5. It would also be appropriate to take note of the proceedings held on 08.06.2020 which read thus:-

“This order will have to be read in continuation of the proceedings which were recorded on the preceding date and one earlier date i.e. 03.06.2020 and 13.03.2020. For brevity, we are not repeating what has been said in the previous set of proceedings and for such purposes, and the background facts, what has been said before should presently suffice. It only needs to be added that, as was brought down in the hearing today, the liability of the Respondent TANGEDCO has now risen to Rs. 168.86 Crores as on 20.05.2020.

The Respondent TANGEDCO, in spite of due notice of the Appeal did not appear on 13.02.2020, the first date fixed for the purpose by us. The matter was adjourned several times thereafter but with no appearance or participation on its behalf. Mercifully, there is appearance today on behalf of the Respondent TANGEDCO, Mr. S. Vallinayagam, Advocate appearing only to seek time to file reply. We questioned him as to the conduct of the Respondent and insisted on some explanation as to the reasons why the liability towards late payment surcharge was not being taken care of, the reasons why there has been no appearance on behalf of the TANGEDCO before us till date and as to whether there is

inclination on the part of the TANGEDCO to now pay up. After some hearing, it was agreed that it would be appropriate that a responsible officer of TANGEDCO be called upon to appear before us to be answerable and accountable. Thus, the matter was deferred for some time, the counsel for TANGEDCO asked to suitably instruct the concerned officer to appear and the matter to be taken at 4. p.m. again.

In the hearing which recommenced at 4 p.m., Mr. Kasi, Financial Controller of TANGEDCO appeared before us from his remote end by video-conferencing mode. From the submissions made by the counsel for the Respondent TANGEDCO, and the official present on behalf of the Respondent TANGEDCO, it is clear that the liability towards late payment surcharge as claimed by the Appellant is not being denied or disputed. The only reason offered today for such liability being not discharged is acute financial crunch that TANGEDCO has been facing.

The Financial Controller agreed that he would hold an internal inquiry and make a report to us on next date of hearing as to the reasons why there has been no appearance on behalf of TANGEDCO on previous dates in spite of service of notice of the appeal for 13.03.2020. We insist on such report to be submitted because we feel the accountability will have to be fixed due to the additional burden that TANGEDCO might carry on account of delay.

We are not impressed with the only plea of financial crunch or the request for TANGEDCO to be given some time to raise

loan for paying up to the Appellant. Given the huge arrears that have accumulated and the delay which has occurred causing distress, in turn, to the Appellant as well, we direct that the Respondent TANGEDCO shall presently pay 50 % of the above mentioned liability towards late payment surcharge in two equal parts, first part to be paid within a week of today and the second part to be paid within the week following that.

The Respondent TANGEDCO, strictly speaking, has forfeited the right to file reply to the main appeal. Nonetheless, in all fairness we would not like to guillotine them. They may file reply explain their position also indicating the road map that they see for themselves so as to take care of their liability in future - particularly the existing liability on account of late payment surcharge to the Appellant on which account the present appeal has been filed. The reply may be submitted within two weeks of today.

We would expect our order to be scrupulously abided by the Respondent TANGEDCO with no provision for coming up for any modification of the timelines. The Respondent TANGEDCO will also be obliged to submit formal reports in the Registry at the end of the next week and also at the end of the week following thereafter with regard to compliance with the above interim directions for part payment.”

6. The above proceedings were followed by the hearing that took place on 13.07.2020, the order reading thus:-

“The entire time of the Court was consumed by DFR Nos. 229 of 2020 and 230 of 2020 which were listed on request for urgent listing. By the time the turn of this appeal to be taken up has come, it is already 04:50 p.m. and there is hardly any time left for the counsel to even recapitulate or open his submissions.

On the last date of hearing, i.e. 08.06.2020, learned counsel Mr. S. Vallinayagam had appeared on behalf of the second respondent (TANGEDCO). He is absent in the proceedings today. The Officer who was present on behalf of the second respondent on the last date is only present but he is unable to explain the reason why the learned counsel is not present on behalf of the second respondent. He concedes that no payment has been made till date to the appellant in terms of the previous directives and no reply has been filed by the second respondent till date. In view of this conduct of TANGEDCO, we are not inclined to grant any extension for compliances.

Since the officer present is unable to explain the reasons, we direct that the Director (Finance), TANGEDCO shall remain present with the counsel duly instructed on the next date of hearing.”

7. The learned counsel have also referred to the proceedings held on 17.08.2020, they having been reduced to in the form of the order that reads thus:-

“This order, as observed earlier also, will be read as one passed in continuity of orders dated 13.03.2020, 08.06.2020 and 13.07.2020.

Mr. S. Vallinayagam, Advocate representing second Respondent is present today. On being asked he submitted that he could not appear on 13.07.2020 because he was pre-occupied in some matter before Central Electricity Regulatory Commission (CERC). The proceedings recorded on that would show that we had taken up the matter at hand at the fag end. We are not impressed with the explanation offered and since such absence and non-participation is similar to the one indulged by the party he represents and its officials, we do not find the apology he now tenders as sufficient. We leave the matter here in so far as the learned counsel is concerned in the hope that he would live up to his responsibilities as an officer of the court hereinafter.

Pursuant to directions in the previous orders Mr. K. Sundaravadhanam, Director/Finance of TANGEDCO for second Respondent is present with Mr. Kasi, Financial Controller. When we started hearing the matter asking for reasons and explanations for total non-compliance with any of our directions in the previous orders, particularly the order dated 08.06.2020, Mr. K. Sundaravadhanam, Director/Finance started sharing a laugh with his colleague Mr. Kasi, Financial Controller right in our face on the screen. This was found by us to be in very bad taste, an attempt to mock at the process, almost on the verge of offering insult to the judicial authority

vested in this tribunal. We told Mr. K. Sundaravadhanam, Director/Finance that conduct of this kind in judicial proceedings, be it by video conference, is totally unacceptable to us it unbecoming of the status he enjoys in the hierarchy of TANGEDCO.

We asked pointedly as to why there has been no compliance made till date with any of the directions given by us in the order dated 08.06.2020 including in the matter of internal inquiry that we had desired to be held and the part payment within specified timelines, even the renewed opportunity, granted on request, for reply to the appeal being filed, not having been availed of. Since Mr. K. Sundaravadhanam, Director/Finance was totally clueless, he instead asking Mr. Kasi, Financial Controller to give the feedback, this clearly showing that he has not taken briefing or instructions from the concerned quarters, we found the proceedings going nowhere. Given this conduct of the officials who should have been responsible enough to be ready to assist, we were left with no option but to ask the Chairman-cum-Managing Director of TANGEDCO himself to appear before us. We deferred the matter sometime around 3 p.m. for it to be taken up again at the end of the board by 4.15 p.m. directing the Registry to provide the necessary links to all concerned.

When we resumed hearing in this matter at 4.15 p.m., Mr. K. Sundaravadhanam, Director/Finance informed us that Mr. Pankaj Kumar Bansal, IAS, Chairman-cum-Managing Director

is incommunicado, his office informing the Director/Finance that he is on leave of absence for the day. We find it difficult to accept such explanation for absence of the CMD in a matter of such grave importance. It is inconceivable that the CMD of the Discom cannot be contacted by senior ranking officers.

We heard the parties further during resumed hearing. Mr. S. Vallinayagam, Advocate, on instructions Mr. K. Sundaravadhanam, Director/Finance submitted that some payments have been made by TANGEDCO to the Appellant after the order dated 08.06.2020. Mr. Deepak Khurana, Advocate representing the Appellant, however, countered by saying that payments made after 08.06.2020 were against the regular periodical energy bills and not on account of the liability which is subject matter of the present appeal. Mr. S. Vallinayagam, Advocate was unable to refute this fact in absence of better inputs. He, however, conceded that no compliance affidavits have been filed in terms of order dated 08.06.2020 whereby part payment was ordered by us to be made on account towards part discharge of the admitted liability.

From the above, we find the conduct of the Respondent TANGEDCO to be totally evasive. We cannot be mute spectator to this. The law vests in us with sufficient authority and jurisdiction to execute our own orders. In order to enforce the directions given by us by our order dated 08.06.2020 and take the matter in that context to the logical end, we are left with no alternative but to direct that the CMD of respondent

TANGEDCO will affirm and discover by affidavit by noon-time tomorrow i.e. 18.08.2020 the following:-

- i) Summary of the receipts of money by TANGEDCO and the payouts made during the period from 08.06.2020 (the date we passed the above-mentioned order) till the date of the affidavit.*
- ii) The particulars of all bank accounts of TANGEDCO and details of the credit balances lying in each of them.*
- iii) An undertaking not to make any payment hereinafter from any of the above-mentioned accounts to any party whatsoever till the embargo is lifted by us.*

Since the above directions are bound to come in the way of regular functioning of such important entity as TANGEDCO, we would not like to prolong the restrictions unnecessarily. Therefore, we intend taking up this matter on day-to-day basis. It shall be listed accordingly for continued hearing at 2.30 p.m. tomorrow i.e. 18.08.2020.

The CMD shall appear without fail before us by video conferencing. He may choose to be assisted by the concerned officers as he desires. We direct that it shall be the personal responsibility of Mr. K. Sundaravadhanam, Director/Finance to suitably inform the CMD accordingly. Any non-compliance will be liable to be viewed seriously.

We reserve discretion to issue appropriate directions with regard to the conduct of Mr. K. Sundaravadhanam, Director/Finance as noted in today's proceedings."

8. The order dated 18.08.2020 which followed the above proceedings would also need to be taken note of as under:-

“Today’s proceedings resumed from where we left the matter yesterday i.e. 17.8.2020.

In compliance with the directions passed by us yesterday the CMD of Respondent TANGEDCO has sworn an affidavit which has been submitted by electronic mode to this Tribunal. The original affidavit shall be submitted in the Registry.

We have heard the parties at length. In fact, the hearing had to be broken into three parts, it being deferred at two stages so that the Additional Advocate General who is present for the Respondent TANGEDCO could seek further instructions.

Though an attempt was made in the affidavit (Para 10) of the CMD which has been submitted to explain away with reference to payment of Rs. 186.95 Crores having been made in several parts during 04.02.2020 to 27.07.2020 projecting that this has a bearing on the subject matter of this appeal, upon protest being lodged by the counsel for the Appellant in this regard, it was fairly conceded by the AAG, upon instructions, that the said payments have been made from time to time (only two parts after order dated 08.06.2020) towards the periodic energy charge invoices. The subject matter of the present appeal, and the proceedings before CERC from which it emanates, instead concern not the periodic energy charge bills raised by the appellant but the liability on account of late payment surcharge. Thus, it was fairly also conceded that the Respondent TANGEDCO will have to account

for its liability towards late payment surcharge for the period in question (upto December 2018) in terms of the PPA, the principal amount of Rs. 95.99 Crores being factored in alongside the interest liability determined by CERC at prime lending rate (PLR) of SBI.

The learned AAG submitted that the calculation presented by the Appellant showing the liability to have risen to Rs. 168.86 Crores (on account of accrual of interest) as on 20.05.2020 - as was recorded in order dated 08.06.2020 - requires to be subjected to scrutiny. We do accept this submission but must add, yet again, that in spite of sufficient opportunity after notice, even after renewal of the opportunity by our subsequent order, the Respondent TANGEDCO has not filed any pleadings in answer to the claim of the Appellant in the appeal not even as to the correctness of the calculations. Be that as it may, we must also observe that we are yet to determine finally as to what is the liability of the Respondent TANGEDCO after factoring in the element of interest. To reach an accurate figure, it will be essential that the Appellant submits its calculations with the Registry within a week of today, its copy to be made over to the Respondent TANGEDCO which will have the liberty to file objections against. Such objections, if any, must be in writing to be presented within a week of copy of the calculations of the appellant being served. We order accordingly.

Given the past conduct, however, we make it clear that the above liberty will not be reopened in case no objections are filed by the Respondent TANGEDCO within the period specified. We

administer caution that following the law on pleadings, in case of default in raising any objections, the calculations presented by the Appellant will be accepted by us as admitted by the Respondent TANGEDCO.

After a very lengthy hearing, the Respondent TANGEDCO though pleading financial crunch and referring to possibility of alleviation of situation in near future with financial help being secured by borrowings, upon instructions from the CMD, the CMD himself confirming by direct submission during the proceedings, held out through AAG a solemn undertaking that the Respondent TANGEDCO shall make part payment by presently paying to the Appellant Rs. 51 crores in three instalments of Rs. 17 Crores each, the first within three days of today and the rest at the interval of two weeks each, all such payments to be “on account” and liable to be adjusted towards the liability of the Respondent due to late payment surcharge for the period up to December 2018, as is the determination by CERC in the impugned order, such payments being, of course, subject to final determination by us in this appeal. The CMD further assured and undertook that the payments towards late payment surcharge in the three instalments undertaken to be made by him on behalf of TANGEDCO will not inhibit or result in withholding of payments against the regular periodic energy charge Invoices the liability to pay the same as per norms to continue.

The payments offered as above by CMD of TANGEDCO are acceptable as an interim arrangement to the Appellant, as was submitted by its counsel to us. We record and accept the solemn

undertaking to the above effect by the CMD of TANGEDCO and bind him accordingly with responsibility for strict and scrupulous compliance.

The officials on whose conduct we were constrained to record certain observations in the previous order are not present today. The CMD of TANGEDCO submitted that he undertakes to hold the internal inquiry in terms of the earlier order regarding the defaults in appearance and participation in these appeal proceedings and also take appropriate action qua the misconduct noted by us yesterday and inform this tribunal in writing of the result and the action taken within four weeks. We bind him with this undertaking as well.

Affidavits in compliance shall be submitted as per the above indicated timelines by the CMD of TANGEDCO.

In view of above tentative and interim resolution of the matter between the parties, hoping that the understanding reached and undertakings given will be duly complied with and there will be no further defaults, the embargo against payments from the accounts of TANGEDCO as recorded in order dated 17.08.2020 is presently vacated.”

9. The Respondent TANGEDCO had submitted an affidavit sworn by the Chief Engineer, Private Power Project on 16.09.2020 which *interalia* took exception to the claim of the Appellant primarily on two aspects viz. first on account of pendency of dispute respecting Rs.25.74 Crores towards escalation index for the period August, 2015 to April, 2017 which is subject matter of WP (c) 5785/2018 which

statedly is pending before the Delhi High Court and, second, the need for reconciliation *vis-à-vis* the CPS claim on change of law petition.

10. Be that as it may, pursuant to the deliberations between the parties, which were encouraged by us, the Respondent TANGEDCO has now filed a fresh affidavit of Chief Engineer, Private Power Project sworn on 03.02.2021. The relevant portion thereof reads as under:

“2. I state that the present affidavit is filed pursuant to the directions of this Hon'ble Tribunal during the court case on Appeal No.56 of 2020 through video conferencing held on 02.02.2021, wherein it was directed to confirm the schedule of pending payment of Rs.87.78 Crs to the Appellant towards Late Payment Surcharge for the period from 01.12.2015 to 30.04.2020.

3. It is submitted that as per the direction of this Hon'ble Tribunal dated 18:08.2020, M/s. TANGEDCO verified the workings of late payment surcharge calculations of the Appellant for the period from 01.12.2015 to 30.04.2020 and arrived at the interest workings as Rs.158.78 Crs against the Appellant claim of Rs,188.66 Crs.

4. TANGEDCO had filed an affidavit on 17.09.2020 before the Hon'ble Tribunal and as per the direction of the Tribunal an amount of Rs.51 Crs in three instalments of Rs.17 Crs each apart from the part payment Rs.20 Crs made on 17.05.2019 has also been already effected.

5. *It is submitted that TANGEDCO has so far paid an amount of Rs.71 Crs against the workings of Rs.158.78 Crs and the balance amount to be paid is Rs.87.78 Crs to the Appellant herein.*
 6. *It is respectfully submitted that TANGEDCO at present is suffering serious financial crisis to the tune of Rs.12623 Crs. as per last audited balance sheet (18-19) and is in the process of clearing the outstandings to the various stake holders in a phasedmanner.*
 7. *It is respectfully submitted that due to the prevailing financial crisis, the balance amount of Rs, 87.78 Crs is proposed to be settled in Seven equal instalments, first instalment will be paid within two weeks from 03.02.2021 and the balance in six instalments thereafter eachmonth.*
 8. *It is respectfully submitted that, in the facts and circumstances stated as above, it is prayed appropriate order be passed by this Hon'ble Appellate Tribunal in the interest of justice.”*
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11. The above-mentioned affidavit dated 03.02.2021 has been shared by the Respondent TANGEDCO with the learned counsel for the Appellant and, upon instructions, the learned counsel for the Appellant submitted his agreement with the proposed resolution of the dispute on its basis.
 12. From the submissions of the parties noted in the various previous proceedings, and the submissions made now, we do note that Respondent TANGEDCO had some objections to the correctness of

the entire claim which was brought for adjudication before the Central Commission. Lest we are misunderstood, we clarify that we are not accepting the merits of such objections as have been raised during these proceedings before us. On the correctness of the entire claim of the Appellant, what we wish to point out is only that these issues, in all fairness, should have been raised at the appropriate stage before the Central Commission, the forum of first instance where inquiry into questions of fact was expected to be held.

13. The proceedings before the Central Commission, in the matter brought before it by the Appellant, if we may use such analogy, was in the nature of civil suit for recovery of money claimed as due. The party against whom such claim had been pressed was expected to render all assistance to the adjudicatory forum so that, if any issues required to be determined, necessary inquiry could be made and clear decision thereupon was rendered. The Central Commission, while dealing with a matter of this nature, was expected to reach a decision that was clear, unambiguous, executable and led to finality. In such adjudicatory proceedings, the liability, if it exists, requires to be found and enforced. If there was any amount found due from the Respondent TANGEDCO unto the Appellant, in absence of any provision to the contrary in the contract or law, there was no occasion for the Commission to give any extended time for payment unless, of course, the party claiming had given consent for such enlargement of period for payment to be granted on request.

14. Concededly, there was neither any contest to correctness of the claim nor any specific request for three months to be given to TANGEDCO for satisfaction of the claim. Be that as it may, the three months period offered by the Central Commission also passed by with no effective compliance being attempted by the Respondent TANGEDCO.

15. What we are unable to understand is the justification for the inclusion of qualifying clause that was added by the Central Commission as tailpiece to the operative portion of the Impugned Order requiring payment to be made of the amount thereby determined it being made conditional upon "*reconciliation of bills with the Petitioner*". If in the opinion of the Central Commission there was a need for reconciliation, questions of fact had arisen. If so, it was the responsibility of the Commission itself to ask the parties to present or discover their respective accounts and on such basis and with their assistance, on the basis of evidence gathered, determine the liability which was to be directed to be discharged. The *decree*, if we may borrow that expression from the civil jurisprudence, that the Central Commission was intending to pass could not have been made conditional or subject to reconciliation since that would relegate the parties to the same stage as they were prior to the adjudicatory process being initiated. It has to be remembered that such disputes end up before adjudicatory authorities because the parties are unable to reconcile or resolve on their own. Rendering the enforcement of legitimate claim of a creditor subject to reconciliation by the debtor at its own convenience is throwing the former into a vicious circle,

virtually denying the relief indefinitely. Such condition added to the direction to pay the lawful dues is in fact taking back by one hand what has been given by the other. The parties to the case are left in uncertainty as to what is the extent to which the claim has been allowed and what is the roadmap ahead for the liability to be discharged. If we may add, this smacks of abdication of responsibility vested by law in the adjudicatory forum.

16. We hope and expect that while dealing with matters of such nature in future the Regulatory Commission will bear in mind that there is a need for clear findings to be returned on the liabilities which are subject matter of the *lis*. Coming back to the matter at hand, the parties are now reconciled to the fact that after adjusting the amounts which have been paid/received during the pendency of the proceedings before the Central Commission and during the pendency of the appeal at hand, the Respondent TANGEDCO owes to the Appellant an amount of Rs. 87.78 Crores towards Late Payment Surcharge for the period 01.12.2015 to 30.04.2020, this being without prejudice to claim that might arise out of the result of the litigation pending before the High Court of Delhi particulars whereof have been noted above and also the claim on account of change of law mentioned earlier.
17. The Respondent TANGEDCO, by aforementioned affidavit dated 03.02.2021, has offered to discharge the liability to the extent of Rs, 87.78 Crores mentioned above in seven equated monthly instalments, the first instalment to be paid on or before 18.02.2021 followed by

similar payments on or before the 18th day of each consecutive month, month by month, till full satisfaction. We bind the TANGEDCO with this undertaking to pay in seven instalments as mentioned above. We further direct that in case of any default in payment of any instalment the entire balance would become recoverable forthwith in accordance with law for which the Appellant will be entitled to take out appropriate proceedings before the executing forum. As would be seen from the earlier proceedings some of which have been extracted *verbatim* above, we have expressed concern about lack of cooperation/participation on behalf of the Respondent TANGEDCO. We were also constrained to record displeasure over the conduct of an official who had appeared before us in person. We are informed by Mr. Balaji Srinivasan, AAG for the State of Tamil Nadu that suitable administrative action in all such regard has been taken assuring that there would be no occasion hereinafter for this tribunal to feel lack of proper assistance for and on behalf of TANGEDCO in any proceedings and further that proper decorum would always be maintained. Expecting this assurance to be sincere, we drop the matter to that extent.

18. With above directions and observations, the appeal and the pending applications stand disposed of.

(Justice R.K. Gauba)
Judicial Member

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(Ravindra Kumar Verma)
Technical Member