

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

COURT-II

**APPEAL NO. 211 OF 2022 &
IA NOS. 697 & 1027 OF 2022**

Dated: **15.07.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

Avaada Energy Private Ltd. & Anr.

.... Appellant (s)

Vs.

Central Electricity Regulatory Commission &Ors.

.... Respondent(s)

Counsel for the Appellant (s) : Mr. Buddy A. Ranganadhan
Mr. Deepak Khurana
Mr. Vineet Tayal
Ms. Nishtha Wadhwa

Counsel for the Respondent (s) : Ms. Suparna Srivastava
Mr. Tushar Mathur
Ms. Soumya Singh for R-2

ORDER

The appeal at hand was directed against the Order dated 05.05.2022 passed by the first respondent/Central Electricity Regulatory Commission ("CERC") on the file of Petition no. 86/MP/2022 which was filed by the appellant herein and is pending consideration of CERC.

During the hearing before CERC on 05.05.2022, the appellant had pressed for an interim order in the nature of the restraint against the second respondent i.e. Central Transmission Utility of India Ltd. ("CTUIL"). Objections to the maintainability of the main petition presented by the appellant have been taken before CERC by CTUIL. The CERC had heard the parties on the said issue and reserved the order by proceedings recorded on 05.05.2022, the order being conspicuously silent on the prayer for interim stay as pressed by the appellant. It is against this backdrop that the appellant had come up before us by the appeal at hand and pressed for interim relief by application (IA no. 697 of 2022). On 13.05.2022, we passed the following order on the said application:

"The learned counsel for the appellant presses for interim protection. We have heard him. Though the learned counsel submits advance notices have duly been served to the respondents, there is no appearance on behalf of any of the respondents on their own.

The appellant had set up a power generation plant, there having been some delay in achieving the Schedule

Commercial Operation Date (SCOD). Be that as it may, it was submitted at bar that COD was duly achieved on 11.05.2022. During this period, the appellant has been availing of Medium Term Open Access (MTOA) for the reason the second respondent (CTU) had caused some delay in grant of Long Term Open Access (LTOA). The appellant had sought extension of MTOA to coincide with the extended SCOD/COD. The liability to pay transmission charges to the CTU for the period is dependent on the grant of MTOA/LTOA. The matter as to whether the MTOA was to be so extended as requested by the appellant is pending decision of the respondent Central Electricity Regulatory Commission (CERC) it having reserved its judgment on the petition on the said subject. The grievance here is that while reserving the decision, the Central Commission has glossed over the request made formally by an application for exemption from the levy of transmission charges, the order passed being silent in that regard.

In the facts and circumstances, we stay the pending bills raised by the CTU against the appellant for collection of transmission charges for the period in question till next date of hearing.

The appellant shall comply with the requirement of the Order XXXIX Rule 3 of CPC within two days.”

We are informed today that CERC is yet to pronounce its decision on the issue of maintainability. In the given facts and circumstances, we direct that the interim protection granted by us by *ad interim* Order passed on 13.05.2022 shall continue to inure to the benefit of the appellant herein till CERC renders its decision on the issue of maintainability of the petition and in the event of the said objection being repelled and the petition being entertained further, till an effective order is passed on the prayer pressed before the Commission for interim relief.

We are of the opinion that after putting in position the above arrangement nothing further survives in the appeal at hand for any further directions by this tribunal at this stage of proceedings pending before CERC.

The appeal and the pending applications are disposed of accordingly.

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

vt/mkj