

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

**APPEAL NO. 25 OF 2021**

**Dated: 25.11.2022**

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

**In the matter of:**

**MERINO INDUSTRIES LIMITED**

**(Formerly known as Merino Panel Products Ltd.)**

44 KM Stone, Delhi-Rohtak Road, Village Rohad,  
Bahadurgarh, Distt. Jhajjar, Haryana- 124501

... Appellant

**VERSUS**

**1. HARYANA ELECTRICITY REGULATORY  
COMMISSION,**

*Through its Secretary,*

Bays 33-36, Sector 4, Panchkula – 134112

**2. UTTAR HARYANA BIJLI VITRAN NIGAM  
LIMITED,**

*Through its Chairman-cum-Managing Director,*

Vidyut Sadan, Sector-6, Panchkula -134109

**3. DAKSHIN HARYANA BIJLI VITRAN NIGAM  
LIMITED,**

*Through its Chairman-cum-Managing Director,*

Vidyut Sadan, Vidyut Nagar, Hisar – 125005

... Respondents

Counsel for the Appellant (s) : Ms. Swapna Seshadri  
Mr. Amal Nair  
Ms. Kritika Khanna

Counsel for the Respondent (s) : Mr. Sandeep Kumar Mahapatra  
Mr. Osheer Verma for R-1

Mr. Samir Malik  
Ms. Nikita Choukse for R-2 & R-3

## **J U D G M E N T (Oral)**

**PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The present Appeal has been filed by the Appellant – Merino Panel Products Limited challenging the order dated 01/06/2020 (“Impugned Order”) passed by the Haryana Electricity Regulatory Commission (hereinafter referred as the “State Commission”) in Case Nos. HERC/PRO-59 of 2019 and HERC/PRO-60 of 2019, whereby the State Commission has approved the Annual Revenue Requirements (“ARR”) of the distribution licensees in the State of Haryana for FY 2020-21 and also determined the Retail Supply Tariff payable by the consumers in the State, *inter-alia* determined the distribution losses in the State, which are applicable on the open access consumers, such as the Appellant herein.

### ***Description of the parties:***

2. The Appellant is a company incorporated under the provisions of the Companies Act, 2013 and is engaged in the business of manufacturing of versatile interior solutions, located in the licenced area of Respondent No. 2.

3. The Respondent No. 1, Haryana Electricity Regulatory Commission is the State Electricity Regulatory Commission for the State of Haryana, exercising powers and discharging functions under the provisions of the Electricity Act, 2003.

4. The Respondent Nos. 2 and 3 are the distribution licensees, engaged in the retail supply and distribution of electricity in their respective areas of licence in the State of Haryana.

5. The Appellant submitted that this Tribunal has rendered various judgments, consistently directing the State Commissions to determine the voltage wise wheeling charges and the voltage wise distribution losses inter-alia emphasizing that the cost of supply ought to be determined on voltage-level basis, however, the State Commission through the Impugned Order has applied the distribution losses by aggregating the HT and LT level losses even after determining the distribution losses separately contrary to the orders of the Hon'ble Tribunal and to its own earlier orders, wherein the distribution losses were segregated to the objective of the Electricity Act.

6. Further added that while the losses were divided between HT and LT levels in the previous tariff orders, the State Commission ought to have further segregated them between the loss levels in a further scientific manner by categorizing it between various voltage-levels, the State Commission has acted in a regressive manner in pooling the voltage-level which were previously segregated.

7. This Tribunal has consistently held that cost of supply must be computed on a voltage-wise basis, in the recent judgment dated 18.08.2020 rendered in Appeal No. 104 of 2020 titled *M/s. Malana Power Company Limited v. Himachal Pradesh State Electricity Board Limited* has inter-alia, held as under:

*“40. Accordingly, the State Commission is bound to determine wheeling charges separately for each voltage level and in case of non-furnishing of information and data by the distribution*

*licensee, should ensure compliance by the licensee, HPSEBL in the instant case.*

....

*42. We remit the matter, involving the issue of determination of wheeling charges voltage wise, to the State Commission for a fresh decision for determining separate wheeling charges for voltage levels 66 kV and above.”*

8. Further, in the judgment rendered on 18.02.2022 in Appeal No. 248 of 2018 (*titled Director, Abhijeet Ferrotech Limited vs APERC & ors.*), this Tribunal has held as under:

*“We, further, reject the submission of the Respondent No. 2 for not determining the tariff voltage wise that the transmission system in the State operates in a ring mode comprising of 400kV, 220kV and 132kV system and as such, it is only the transmission loss for the entire transmission network which can be determined. In fact, as per Central Electricity Authority Regulations, ABT meters are to be installed at the interface points of 132 kV, 220kV and 400kV and also at places where EHT network gets connected to the distribution system of the distribution licensees making power loss easily accessible for the Distribution Licensee. Many Distribution Companies in the Country (list of 22 of such company have been provided by the Appellant) have fixed voltage wise tariffs for HT consumers though such Licensees may also be similarly placed.*

*In the light of the foregoing paragraphs, it is clear that this Tribunal has, time and again, been consistently held that the*

*State Commissions have to necessarily determine voltage wise tariff depending upon different category of consumers, and the principle of which has also been upheld by the Hon'ble Supreme Court in **Punjab State Power Corpn. Ltd. v. Punjab State Electricity Regulatory Commission**, (2015) 7 SCC 387 as stated above."*

9. Reliance was also placed on the following judgments rendered by this Tribunal as under:

- (a) Punjab State Power Corporation Limited v. Punjab State Electricity Regulatory Commission (2015) 7 SCC 387 dated 10.12.2015;
- (b) Kerala High Tension and Extra High Tension Industrial Electricity Consumers Association vs KSERC Appeal No. 179 of 2012 dated 31.05.2013;
- (c) Mawana Sugars Limited vs PSERC Appeal No. 142 & 168 of 2013 dated 17.12.2014;
- (d) Steel Furnace Association of India vs PSERC, Appeal No. 176,191,237 & 245 of 2012 dated 12.09.2014.
- (e) SIEL Ltd., New Delhi vs. Punjab State Electricity Regulatory Commission and Ors., 2007 APTEL 931
- (f) M/s. Tata Steel Limited vs. Orissa Electricity Regulatory Commission & Anr. (Order dated 30.05.2011, Appeal No. 102 of 2010)
- (g) M/s. Vishal Ferro Alloys Ltd. & Ors. –v- Orissa Electricity Regulatory Commission (Order dated 02.09.2011, Appeal No. 57, 67 etc. of 2011)

- (h) Bihar Industries Association v. Bihar Electricity Regulatory Commission, (Judgment dated 10.05.2012, Appeal No. 14 of 2011 and batch.)
- (i) RVK Energy Private Limited v. Central Power Distribution Co. of Andhra Pradesh Ltd., 2007 ELR (APTEL) 1222

10. From the above, it is noted that the Impugned Order passed by the State Commission is contrary to the settled position and principle for determination of wheeling tariff and distribution losses voltage wise.

11. As placed before us, the State Commission has determined the distribution losses voltage wise i.e. separately for HT level at 5.87% for the year 2018-19 in the previous tariff order dated 15.11.2018 and again as 5.93% for HT Level by the dated 07/03/2019, even to the fact that the licensees are required to reduced the losses over a period of time and in line with the above the losses for the subsequent years ought to have been reduced, however, to our disbelief the distribution losses for the HT level has been increased substantially to 10.61%, thereby severely prejudicing the open access consumers, such as the Appellant for taking electricity at higher voltage-levels.

12. On being asked, the Appellant submitted that reason of such an increase is pooling of distribution losses of HT level with the LT level, it cannot be disputed that the consumers, such as the Appellant, who take power at a higher voltage-level contribute significantly to the reduction of loss levels in the distribution system, as the loss levels of higher voltage-levels are much lower than the losses at the lower voltage-level.

13. From the Impugned Order, we could not find any no rational for such an act of the State Commission to pool the distribution losses across different voltage-levels, even though the cost of supply and the cost of the network at various voltage-levels are significantly different.

14. We are convinced with the submission of the Appellant that such pooling of distribution losses of HT and LT levels has created artificial barriers for open access consumer, which is certainly contrary to the spirit of the Electricity Act, 2003.

15. The Respondents No. 2 & 3 submitted that:

- i. the Appellant is aggrieved by the determination of distribution losses in the State of Haryana on a pooled basis for HT and LT levels, as a result of which, the losses have been determined at 10.61%. It is the contention of the Appellant that the same is contrary to the Respondent No.1/HERC's earlier orders. The Appellant has further averred that the Impugned Order also levies distribution losses on the 66Kv consumers who though are connected with the network of the transmission licensee but do not use the network of the distribution licensees.
- ii. the grievance of the Appellant is mis-founded. In this regard, reliance is placed on the definition of distribution system provided under section 2 (19) of the Electricity Act 2003 which states that distribution system is the system of wires and associated facilities between delivery points on the transmission lines or the generating station and the point of connection to the consumers. Relevant excerpt of Section 2 (19) is reproduced here as under:

*"distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers,*

- iii. In view of the above, any system of wires & associated facilities between the transmission lines/generating station and point of connection to the consumer are the part of the distribution system. Thus, system of wires and associated facilities for connections at 66 IN & above voltage level between STU and point of connection at the consumer installation are the part of distribution system and open access consumers connected at such voltage level are utilizing distribution system for respective consumption through open access. Further, the definition of Distribution System as provided in Electricity Rules, 2005 categorically includes high pressure cables.

*"4. Distribution System. - The distribution system of a distribution licensee in terms of sub-section (19) of section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, substation or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others"*

16. We find the submissions of the Respondents No. 2 & 3 as totally irrelevant and unreasonable. The Respondents also submitted the order passed by the State Commission in the case *"Northern Railways in PRO 66 of*



2017”, which is further, irrelevant in the light of the settled principle consistently held by this Tribunal.

17. The Respondents also submitted that the license as issued by the Hon'ble Commission to the distribution licensee does not provide distinction within the distribution system in terms of HT distribution system and LT distribution system for HT consumers and LT consumers, as stated by the Appellant. Thus, the Respondents are not authorized to differentiate between the HT distribution network and LT distribution network for HT consumers and LT consumers. Hence, the argument of the Appellant is ex-facie incorrect and deserves to be rejected.

18. We decline to accept the submission as above as the State Commission has itself determined the distribution losses separately for HT and LT levels but erred in its decision by averaging out the two for the determination of wheeling charges, the State Commission in the Impugned Order has separately determined the two as seen from the table (para 8.5.3 of the Impugned Order) below:

**Calculation of Voltage wise losses for the FY 2020-21**

		UHBVNL	DHBVNL	Total
1a	HT sales	4682.29	6175.49	10857.78
1b	LT sales	10905.30	16710.56	27615.86
1	Total Sales	15587.59	22886.05	38473.64
2	Losses %			
2a	HT	6.04	6.65	
2b	LT	11.80	12.41	
3	Loss units			
3a	HT	300.99	439.93	740.92
3b	LT	1458.99	2367.60	3826.59
4	Sales grossed up by Technical losses			

4a	HT	4983.28	6615.42	11598.70
4b	LT	12364.29	19078.16	31442.45
5	Combined Technical losses			
5a	<b>HT</b>			<b>6.39%</b>
5b	<b>LT</b>			<b>12.17%</b>
5	Total			10.61%
6	Total Distribution Losses	4201.15	4532.24	8733.39
7	Total Commercial losses (6-3)	2441.17	1724.72	4165.89
8	Commercial losses allocated to HT and LT based on grossed up units (4)			
8a	HT	701.25	444.07	1145.32
8b	LT	1739.92	1280.65	3020.57
9	Total Voltage level distribution losses (3+8)			
9a	HT	1002.24	883.99	1886.24
9b	LT	3198.91	3648.25	6847.15
10	Combined Technical and Commercial			
10a	HT			14.80%
10b	LT			19.87%
10	Total			18.50%
11	Units sent out after accounting for Technical and Commercial Losses			
11a	HT	5684.53	7059.48	12744.02
11b	LT	14104.21	20358.81	34463.01
11	Total	19788.74	27418.29	47207.03

19. From item No. 5a and 5b of the above table, it is clear that the State Commission has determined the distribution losses as 6.39% and 12.17% at HT and LT levels, however, at item no. 5, it has averaged out the two as 10.61% and applied the same in the instant case i.e. of the Appellant which is contrary to the settled law.

20. The State Commission in its reply submitted that it was conscious of the fact that the distribution losses of the Discoms were showing a declining trend and it was thus expected that as a natural corollary the distribution losses for the FY 2020-21 ought to have progressed on the declining trajectory as agreed upon under UDAY scheme as well, however, the distribution losses are also dependent upon the quantum of energy sold to different consumer categories connected at different voltage levels, further added that during the period the sales mix got disrupted due to the lockdown imposed to contain the spread of COVID-19 pandemic altering the pattern of electricity demand, as a one-time

measure limited to the FY 2020-21, the Answering Respondent considered it prudent to peg the distribution losses at an achievable level of 18.50%.

21. The above submission was countered by the Appellant stating that it is wrong and denied that the pandemic could be used as a reason by the State Commission for determination of system losses contrary to law, in fact, the very prayer of the distribution licensees for suspension of open access or restricting the open access itself is contrary to law and the specific provisions of the Electricity Act, 2003.

22. We agree with the Appellant that the State Commission has erred in taking a decision contrary to the law.

23. The only issue which is assailed by the present appeal is on the pooling of the distribution losses at HT levels and LT levels resulting into an artificial increase in the distribution losses to 10.61% adversely affecting the Appellant. Further, the State Commission vide its earlier orders as noted in the foregoing paragraphs, has determined and considered the distribution losses separately for HT levels and LT levels, in consonance with the Electricity Act, 2003 which mandates losses to be determined voltage-wise basis and also settled by this Tribunal through various judgments.

24. However, achieving the said objective, the State Commission has in fact gone backwards in pooling the loss levels of LT and HT levels, which in fact were determined separately previously, giving reasons that the quantum of energy sold being reduced, sales mix having been disrupted etc.

25. We find the decision contrary to the spirit of the Electricity Act, 2003 and the principle of law settled by this Tribunal, and find merit in the Appeal in the light of facts and circumstances of the present case to the extent that the State Commission had determined the losses at an exorbitant level of 10.61% in a pooled manner in the State.

### **ORDER**

For above reasons, we allow the appeal and set aside the impugned order to the extent thereby wheeling losses at 10.61% have been levied on average basis combing the HT&LT consumers. The State Commission is directed to reconsider the issue in light of the judgments referred to above and the provisions of the Electricity Act, 2003 as indeed the regulatory framework.

The appeal is disposed of in above terms.

**Pronounced in open court on this 25<sup>th</sup> Day of November, 2022**

**(Sandesh Kumar Sharma)**  
Technical Member

*pr/tp*

**(Justice R.K. Gauba)**  
Officiating Chairperson