

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI
(APPELLATE JURISDICTION)**

**APPEAL NO. 50 OF 2020 &
IA NO.2177 OF 2019**

Dated: 05.04.2022

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

In the matter of:

KAZE ENERGY LIMITED

A company incorporated under the provisions of the Companies Act, 1956 having its registered office at:
IL&FS Financial Centre, Plot C-22, G-Block,
Bandra Kurla Complex, Mumbai – 400 051

.... Appellant(s)

VERSUS

1. GUJARAT URJA VIKAS NIGAM LIMITED

A company incorporated under the provisions of the Companies Act, 1956
Having its registered office at
Sardar Patel Vidyut Bhavan
Race Course, Vadodara – 390007

2. GUJARAT STATE ELECTRICITY REGULATORY COMMISSION

6thFloor, GIFT ONE, Road 5C
Zone 5, GIFT City
Gandhinagar -382355
Gujarat, India.

... Respondent(s)

Counsel for the Appellant (s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Vijayendra Pratap Singh
Mr. Aditya Jalan
Ms. Durga Priya Manda,
Ms. Mandakini Ghosh
Mr. Vanya Chhabra

Ms. Shreya Choudhary
Counsel for the Respondent (s) : Mr. Anand K. Ganesan
Ms. Swapna Sheshadri for R-1
Mr. Pallav Mongia
Mr Tushar Srivastava for R-2

J U D G M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

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

2. The appellant is a wind power generator operating and maintaining a wind power station with capacity of 48.3MW in district Jamnagar, Gujarat. It had entered into a Power Purchase Agreement (PPA) with the first respondent Gujarat Urja Vikas Nigam Limited (GUVNL) in the year 2017 committing entire generation capacity for supply to the said entity for a period of 25 years, the contract between parties being governed by a generic tariff order wherein the electricity is to be purchased by the GUVNL from the appellant at Rs.4.19 per unit. The appellant received the due payments from GUVNL till the generation month preceding November 2018, such payments having been thereafter stopped. This eventually led to the appellant approaching the respondent State Commission by petition no.1797/2019 seeking, *inter alia*, directions for payment of the amounts due for electricity supplied. The said petition was dismissed by the Commission by its order dated 08.07.2019, which is impugned by the appeal at hand.

3. While the controversy between parties herein was brewing on account of default in payment, certain developments were taking place before National Company Law Tribunal (NCLT) at Mumbai, some

proceedings having been taken in due course by appeal before National Company Law Appellate Tribunal (NCLAT). Such proceedings concerned a company known as *Infrastructure Leasing & Financial Services* (ILFS). It appears, ILFS is the name of the group company, one of its subsidiaries being *ILFS-Wind Energy* (for short 'ILFS-WE'). ILFS-WE, in turn, held at the relevant point of time 51 per cent stock in the appellant company. Proceedings had been taken out against ILFS before NCLT, under sections 241 and 242 of Companies Act, 2013, corresponding to sections 397 and 398 of the Companies Act, 1956. Process similar to resolution process under Insolvency and Bankruptcy Code was undertaken during the said proceedings.

4. It appears that GUVNL was the administrator of GEB Contributory Provident Fund and had made investment to the tune of Rs.180 crores approximately in three companies viz. ILFS, ILFS Transportation Network India Limited and ILFS Financial Services during 2010-2017. The subsequent exchange of correspondence and pleadings before the concerned authorities brought to light that by stopping the payment of dues of the appellant under the PPA, the GUVNL was claiming a set-off against the money due to the appellant on account of the fact that it was under the control of a subsidiary of ILFS.

5. Against the above backdrop, by the impugned order dated 08.07.2019, the respondent State Commission rejected petition of the appellant seeking directions in the nature mentioned earlier.

6. Subsequent to the said decision of the Commission, the appellant had approached the NCLAT making a prayer *inter alia* for direction to GUVNL to make the payment of dues and to be impleaded for such purposes. It appears that on 15.10.2019, pursuant to a commercial

arrangement between ILFS-WE and another company named ORIX, the latter (ORIX) bought out the entire shareholding of the former (ILFS-WE) in the appellant company, making it a wholly owned subsidiary of ORIX.

7. Eventually, NCLAT by its order dated 23.10.2019 held, *inter alia* thus:

“I.A. Nos. 2673, 2674, 2675, 2676, 2677

These applications have been preferred by Applicant(s) ‘Lalpur Wind Energy Private Limited’ (in I.A. No.2673/2019); ‘Rated Wind Power Private Limited’ (I.A.No.2674/2019); ‘Khandke Wind Energy Private Limited’ (I.A. No.2677/2019); with similar prayer to implead ‘Gujarat Urja Vikas Nigam Limited’ as party Respondent in the main petition and to pass appropriate order.

Mr. Ramji Srinivasan, learned Sr. Counsel appearing on behalf of the Applicant(s) submits that in view of subsequent development as the Applicant(s) have ceased to be subsidiaries of ‘Infrastructure Leasing and Financial Services Ltd.’ They will be allowed to withdraw these applications to enable the Applicant(s) to move before the appropriate Forum. Prayer is allowed.

IAs stand disposed of with liberty to the Appellant to move before the appropriate Forum.”

8. In our considered view, there is a material change in the circumstances, by way of subsequent developments, necessitating a revisit of the petition of the appellant, which was disposed of by the impugned order dated 08.07.2019, in that the appellant is no longer under the control of any company connected with ILFS. In these circumstances, the question of GUVNL claiming a set-off against dues of the appellant will require to be looked at afresh. In this view of the matter, we deem it proper to set aside the impugned order and remit the case arising out of the petition of the appellant for fresh decision to the respondent Commission. We order accordingly. Lest there be any

doubts, we make it clear that nothing said by us in this judgment will be treated as expression of opinion on any of the questions of law that arise.

9. Given the fact that the claim of the appellant for recovery of its dues has been pending all these years on account of the parallel proceedings before the NCLT and NCLAT, it is desirable that the State Commission gives due primacy to the petition of the appellant and decides it expeditiously preferably not later than four months of today. We must add that while deciding the matter anew, the Commission will bear in mind that it will be expected to take fresh decision with open mind and not feeling bound by any view taken earlier.

10. The appeal and the pending application(s) are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 05th DAY OF APRIL, 2022.**

(Sandesh Kumar Sharma)
Technical Member

pr/tp

(Justice R.K. Gauba)
Officiating Chairperson