

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

**EP NO. 01 OF 2021 & IA NO. 145 OF 2021  
AND  
EP NO. 02 OF 2021 & IA NO. 147 OF 2021**

Dated: **31.10.2022**

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

In the matters of:

**EP NO. 01 OF 2021 & IA NO. 145 OF 2021**

1. **ES Solar Private Limited,**  
*Through its Authorized representative*  
*Mr. Jatin Saluja,*  
55, Solar Tower, 6<sup>th</sup> Main  
11<sup>th</sup> Cross, Lakshmaiah Block  
Ganganagar, Bengaluru,  
Karnataka - 560032.
2. **Emmvee Photovoltaic Power Private Limited,**  
*Through its Authorized representative*  
*Mr. Jatin Saluja,*  
No. 55, Solar Tower, 6<sup>th</sup> Main,  
11<sup>th</sup> Cross, Lakshmaiah Block, ..... Petitioner(s)  
Ganganagar, Bengaluru,  
Karnataka – 560032.

***Versus***

1. **Bangalore Electricity Supply Company Limited  
(BESCOM)**  
*Through Managing Director,*  
Corporate Office, K. R. Circle,  
Bengaluru, Karnataka – 560001.
2. **Karnataka Electricity Regulatory Commission**  
*Through its Secretary,*  
37, MG Road, Yellappa Garden,  
Yellappa Chetty Layout,  
Ulsoor, Bengaluru, Karnataka – 560001. .... Respondent(s)

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. Chirag Kher  
Mr. Geet Ahuja

Counsel for the Respondent(s) : Ms. Samiksha Jain for R-1

**EP NO. 02 OF 2021 & IA NO. 147 OF 2021**

1. **ES Sun Power Private Limited,**  
*Through its Authorized representative*  
*Mr. Jatin Saluja,*  
55, Solar Tower, 6<sup>th</sup> Main  
11<sup>th</sup> Cross, Lakshmaiah Block  
Ganganagar, Bengaluru,  
Karnataka - 560032.
  
2. **Emmvee Photovoltaic Power Private Limited,**  
*Through its Authorized representative*  
*Mr. Jatin Saluja,*  
No. 55, Solar Tower, 6<sup>th</sup> Main,  
11<sup>th</sup> Cross, Lakshmaiah Block, .... Petitioner(s)  
Ganganagar, Bengaluru,  
Karnataka – 560032.

***Versus***

1. **Bangalore Electricity Supply Company Limited (BESCOM)**  
*Through its Managing Director,*  
Corporate Office, K. R. Circle,  
Bengaluru, Karnataka – 560001.
  
2. **Karnataka Electricity Regulatory Commission**  
*Through its Secretary,*  
37, MG Road, Yellappa Garden,  
Yellappa Chetty Layout,  
Ulsoor, Bengaluru, Karnataka – 560001. .... Respondent(s)

Counsel for the Petitioner(s) : Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. Chirag Kher  
Mrs. Arsheya Mithal  
Mr. Geet Ahuja

Counsel for the Respondent(s) : Ms. Samiksha Jain for R-1

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

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

1. The petitioners had come up to this tribunal earlier by Appeal Nos. 332 and 333 of 2018 seeking to assail the order dated 23.10.2018 of Respondent *Karnataka Electricity Regulatory Commission* (“the State Commission”) passed in OP Nos. 19 and 18 of 2018, their grievances then concerning the finding that the power projects were not commissioned in time, which had had the adverse effect of reduction in tariff from agreed rate of Rs. 6.10/kWh to Rs. 4.36/kWh, the Respondent *Bangalore Electricity Supply Company Limited* (“BESCOM”), the procurer also having levied liquidated damages. By a common Judgment rendered on 08.05.2019, the appeals were allowed, the relevant part of the said decision being as under:

*“43. In view of the afore-stated discussion and reasoning, the commencement of the solar plants even if taken as 17.10.2017 as accepted and admitted by Respondents and Commission, the scheduled date of commissioning was done within the time limit prescribed under the agreements.*

*44. If the commissioning of the solar plants was done in time in terms of agreements, the Appellants have to get tariff of Rs.6.10/kWh and not Rs. 4.36/kWh.*

*45. Consequently, there is no default in the commissioning of the projects for the reasons stated above. Therefore, the question of payment of liquidated damages in terms of agreements also would not arise.*

*46. In view of the above discussion and reasoning, we are of the opinion that the impugned order has to be set aside by allowing the appeals. Accordingly the appeals are allowed and the order dated 23.10.2018 passed in O.P. No. 18 of 2018 and O.P. No. 19 of 2018 is set aside. The Respondents shall read the whole calculations in terms of our opinion stated above.*

*47. There shall be no order as to costs. All the pending IAs shall stand disposed of.”*

**2.** The above said Judgment dated 08.05.2019 was upheld by Hon'ble Supreme Court by order dated 03.05.2021 in Civil Appeal No. 9273-9274 of 2019.

**3.** It is the contention of the petitioners that though the deficiency in the tariff has been made good by requisite payments, the Respondent BESCO has failed to discharge its responsibility in regard to the invoices claiming the late payment surcharge in terms of the relevant clauses of the Power Purchase Agreements raised, immediately after the decision by this tribunal as well as decision by Hon'ble Supreme Court in the Civil Appeals.

**4.** It has been the contention of the Respondent BESCO that there was no claim for late payment surcharge brought before the State Commission or agitated in the appeals before this tribunal or, for that matter, in the final round of appeals before Hon'ble Supreme Court, and therefore, there is no order in existence which requires to be executed by

this tribunal on the subject of liability or otherwise of BESCO on such account.

5. After some hearing, learned senior counsel for the petitioners, upon instructions, submitted that he may be permitted to withdraw these petitions and instead given liberty to approach the State Commission by appropriate petitions for resolution of the dispute relating to the liability of BESCO towards late payment surcharge arising from the chronology of events referred to above, the cause of action in which regard is claimed also with reference to the date of judgment by this tribunal as upheld by Hon'ble Supreme Court and the invoices raised in such wake.

6. The petitions are disposed of as withdrawn. Liberty, as prayed, is granted. The contentions of both sides are kept open. The petitions in the nature mentioned above may be filed within 4 (four) weeks of today.

7. Given the fact that the issue has persisted after a prolonged litigation in the past between the parties, it is desirable that the Commission will give priority to the petitions that the petitioners herein proposes to take out in terms of the liberty as above. Therefore, we hope that the Commission will deal with such matters expeditiously and take a final decision thereupon at the earliest, preferably within three months of the petitions being presented.

8. The petitions are disposed of in above terms. The pending IAs are rendered infructuous and disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 31<sup>st</sup>  
DAY OF OCTOBER 2022

**(Sandesh Kumar Sharma)**  
Technical Member

*tpd/mk*

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