

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

COURT-II

**EXECUTION PETITION NO. 13 OF 2021 &
IA NOS. 1324 OF 2021 & 161 OF 2022**

Dated: **04.02.2022**

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

In the matter of:

ALPS Industries Limited

.... Petitioner(s)

Vs.

Uttarakhand Power Corporation Ltd.

.... Respondent(s)

Counsel for the Petitioner(s) : Mr. Anand K. Ganesan
Mr. Aditya H. Dubey

Counsel for the Respondent (s) : Mr. Pradeep Misra for R-1

ORDER

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

IA NO. 161 OF 2022

[Appl for Condonation of Delay in filing Reply]

For the reasons set out in the application, the delay in filing reply is condoned. The reply is taken on record. IA is disposed of.

**EXECUTION PETITION NO. 13 OF 2021 &
IA NO. 1324 OF 2021**

The execution petition at hand arises out of the Judgment dated 14.07.2021 in Appeal no. 329 of 2019, the operative part whereof reads thus:

“...
107. In light of the above discussion and reasoning, we are of the opinion that the impugned order dated 05.08.2019 of the Respondent Commission is liable to be set aside. The Appellant is entitled to refund of the additional surcharge which was wrongfully collected from it between 17.06.2013 to 31.03.2017 along with bank interest applicable in terms of Section 62 (6) of the Electricity Act. Accordingly, the Appeal is allowed.”

As is clear from the above formulation of the relief granted, the rate of bank interest was not spelt out but reference was made to the provision contained in Section 62(6) of the Electricity Act, 2003, which reads thus:

“Section 62. (Determination of tariff): ---

...

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”

The expression used in the above provision is “interest equivalent to the bank rate” it is tried that bank rates fluctuate from time to time, it being regulated by the Reserve Bank of India (RBI) at the Apex and by the public sector banks in such terms. The matter relates to the Power Purchase Agreement (PPA) governed by Uttarakhand Electricity Regulatory Commission (“State Commission”, for short). The Regulations framed by the State Commission do not cover the subject of “Bank Rate” within the meaning of Section 62(6). However, it is pointed out that similar provision of levy of interest exists in the shape of Section 47(4) of the Electricity Act which reads thus:

“Section 47. (Power to require security): ----

...

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.”

In the context of the above provision contained in Section 47(4), the State Commission have the occasion to pass general Order dated 27.07.2007 in the case styled as “In the matter of Rate of Interest payable on Security Deposit of consumers”. The relevant portion whereof reads thus:

“7. In the event of delay in making the adjustment for interest on security deposit by the Licensee, it shall pay interest at 1½ times the rate specified under clause (1) above and the burden of additional liability for this delay shall not be allowed to be passed through in tariff.”

During the course of compliance with the judgment under execution, a controversy has arisen between the parties wherein the execution petitioner claims payment of interest at the base rate plus 350 base points declared by the State Bank of India (SBI) from time to time, reliance being placed on Regulation 3(5) of Central Electricity Regulatory Commission (Tariff) Regulations, 2014 which reads thus:

“(5) “Bank Rate” means the base rate of interest as specified by the State Bank of India from time to time or any replacement thereof for the time being in effect plus 350 basis points”

It is pointed out that the Tariff Regulations, 2014 framed by Central Electricity Regulatory Commission (“Central Commission”, for short) are in relation to the provision of levy of interest at bank rate under Section 62(6) of the Electricity Act, 2003.

In our view, the position taken by the respondent with reference to the State Commissions general Order under Section 47(4) of the Electricity Act, 2003 is incorrect and inappropriate in as much as the interest referred to therein pertains to the delay in refund of security deposits by the distribution licensees. In the matter at hand, the claim of the execution petitioner relates to an amount of additional surcharge recovered in excess for the period 17.06.2013 to 31.03.2017. In these circumstances, in absence of any regulations framed by the State Commission on the subject, the CERC Tariff Regulations, 2014 will have to be applied.

We order accordingly.

It appears the execution petitioner has already raised invoices in terms of Tariff Regulations, 2014 of Central Commission claiming payment of interest for the relevant period. The respondent will be obliged to honor the said invoices so as to get discharge of its liability in terms of the judgment under execution. We direct the payment to be made in such light by adjustment in the periodic bills, as is the understanding reached between the parties.

The execution petition and pending application stand disposed of in above terms.

(Sandesh Kumar Sharma)
Technical Member

vt/mkj

(Justice R.K. Gauba)
Officiating Chairperson