

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

IA NOS. 477 & 1247 OF 2019 IN APPEAL NO. 223 OF 2015
IA NOS. 476 & 1246 OF 2019 IN APPEAL NO. 225 OF 2015
IA NO. 474 OF 2019 IN APPEAL NO. 237 OF 2015 & IA NO. 165 OF
2016
IA NO. 475 OF 2019 IN APPEAL NO. 237 OF 2016 & IA NO. 513 OF
2016
IA NO. 473 OF 2019 IN APPEAL NO. 315 OF 2016
IA NO. 478 OF 2019 IN APPEAL NO. 12 OF 2017

Dated : 6th August, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. Ravindra Kumar Verma, Technical Member**

In the matter of:

IA NOS. 477 & 1247 OF 2019 IN APPEAL NO. 223 OF 2015
IA NOS. 476 & 1246 OF 2019 IN APPEAL NO. 225 OF 2015
IA NO. 473 OF 2019 IN APPEAL NO. 315 OF 2016

Reliance Infrastructure Ltd.
"H" Block, 1st Floor,
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

.... Appellant(s)

Versus

1. Maharashtra Electricity Regulatory
Commission
World Trade Centre, No.1
Centre No.1, 13th Floor
Cuffe Parade, Colaba
Mumbai – 400 001

.... Respondent No.1

2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyananeshwar
Marg, Vile Parle (W),
Mumbai – 400 056

Respondent No.2

3. Prayas C/o Amrita Clinic
Athawale Corner

- Lakdipool-Karve Road Junction
Deccan Gymkhana, Karve Road
Pune – 411 004 Respondent No.3
4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
PO Ghansoli, Navi Mumbai – 400 071 Respondent No.4
5. Maharashtra Chamber of Commerce,
Industry and Agriculture
Oricon House, 6th Floor
12 K. Dubash Marg, Fort
Mumbai 400 001 Respondent No.5
6. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 440 001 Respondent No.6
7. The Chief Engineer
State Transmission Utility
Maharashtra State Electricity
Transmission Co. Ltd.
Plot No. C-19, “E” Block Prakashganga
Bandra-Kurla Complex, Bandra (East)
Mumbai – 400 051 Respondent No.7

IA NO. 474 OF 2019 IN APPEAL NO. 237 OF 2015
& IA NO. 165 OF 2016

Reliance Infrastructure Ltd. Appellant(s)
“H” Block, 1st Floor,
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Versus

1. Maharashtra Electricity Regulatory Commission Respondent No.1
World Trade Centre, No.1
Centre No.1, 13th Floor
Cuffe Parade, Colaba
Mumbai – 400 001
2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyananeshwar
Marg, Vile Parle (W),
Mumbai – 400 056

3. Prayas C/o Amrita Clinic
Athawale Corner
Lakdipool-Karve Road Junction
Deccan Gymkhana, Karve Road
Pune – 411 004 Respondent No.2
4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
PO Ghansoli, Navi Mumbai – 400 071 Respondent No.3
5. Maharashtra Chamber of Commerce,
Industry and Agriculture
Oricon House, 6th Floor
12 K. Dubash Marg, Fort
Mumbai 400 001 Respondent No.4
6. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 440 001 Respondent No.5
7. Tata Power Company Limited
Bombay House, Fort
Mumbai – 400 001 Respondent No.6
- Respondent No.7

IA NO. 475 OF 2019 IN APPEAL NO. 237 OF 2016
& IA NO. 513 OF 2016

Reliance Infrastructure Ltd. Appellant(s)
“H” Block, 1st Floor,
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Versus

1. Maharashtra Electricity Regulatory
Commission
World Trade Centre, No.1
Centre No.1, 13th Floor
Cuffe Parade, Colaba Respondent No.1
Mumbai – 400 001
2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyananeshwar
Marg, Vile Parle (W),
Mumbai – 400 056 Respondent No.2

3. Prayas C/o Amrita Clinic
Athawale Corner
Lakdipool-Karve Road Junction
Deccan Gymkhana, Karve Road
Pune – 411 004 Respondent No.3
4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
PO Ghansoli, Navi Mumbai – 400 071 Respondent No.4
5. Maharashtra Chamber of Commerce,
Industry and Agriculture
Oricon House, 6th Floor
12 K. Dubash Marg, Fort
Mumbai 400 001 Respondent No.5
6. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 440 001 Respondent No.6
7. The Chief Engineer (SLDC)
Maharashtra State Load Despatch Centre
Thane-Belapur Road, Airoli
Navi Mumbai – 400 078 Respondent No.7
8. The Chief Engineer
State Transmission Utility
Maharashtra State Electricity
Transmission Co. Ltd.
Plot No. C-19, “E” Block Prakashganga
Bandra-Kurla Complex, Bandra (East)
Mumbai – 400 051 Respondent No.8

IA NO. 478 OF 2019 IN APPEAL NO. 12 OF 2017

Reliance Infrastructure Ltd. Appellant(s)
“H” Block, 1st Floor,
Dhirubhai Ambani Knowledge City
Navi Mumbai – 400 710

Versus

1. Maharashtra Electricity Regulatory
Commission
World Trade Centre, No.1

- Centre No.1, 13th Floor
Cuffe Parade, Colaba
Mumbai – 400 001** Respondent No.1
- 2. Mumbai Grahak Panchayat
Grahak Bhavan, Sant Dyananeshwar
Marg, Behind Cooper Hospital
Vile Parle (W), Mumbai – 400 056** Respondent No.2
- 3. Prayas Energy Group
Amrita Clinic, Athawale Corner
Lakdipool-Karve Road Junction
Deccan Gymkhana, Karve Road
Pune – 411 004** Respondent No.3
- 4. Thane Belapur Industries Association
Plot No. P-14, MIDC, Rabale Village
PO Ghansoli, Navi Mumbai – 400 071** Respondent No.4
- 5. Maharashtra Chamber of Commerce,
Industry and Agriculture
Oricon House, 6th Floor
12 K. Dubash Marg, Fort
Mumbai 400 001** Respondent No.5
- 6. Vidarbha Industries Association
1st Floor, Udyog Bhavan
Civil Lines, Nagpur – 440 001** Respondent No.6
- 7. Chamber of Marathwada Industries
& Agriculture
Bajaj Bhavan, P-2, MIDC Industrial Area
Railway Station Road
Aurangabad – 431 005** Respondent No.7

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Impleader

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Ms. Stuti Krishn
Ms. Pratiti Rungta
Mr. Shivankur Shukla for R-1

Mr. M.Y. Deshmukh
Mr. Manjeet Kirpal
Mr. Pratyush Singh for R-7

Mr. Raghav Malhotra for R-7
(in appeal No. 237 of 2015)

Mr. Sudhanshu S. Choudhari
Mr. Yogesh S. Kolte
Mr. Surabhi Guleria
Mr. Mahesh Shinde for MSLDC/R-7

Ms. Sylona Mohapatra for Adani

ORDER

PER HON'BLE MR. RAVINDRA KUMAR VERMA, TECHNICAL MEMBER

1. Adani Electricity Mumbai Limited (“AEML”) (hereinafter referred to as the “**Applicant**”) has filed Interim Application No. 476 of 2019 in Appeal No. 225 of 2015 before this Tribunal seeking the following reliefs:
 - (a) direct that the Applicant be impleaded as a necessary party to the present Appeal;
 - (b) direct that the Appellant be substituted with the Applicant in view of the facts and circumstances mentioned above; and
 - (c) pass such further order(s) that this Hon’ble Tribunal may deem fit in the interests of justice.

2. The present Appeal No. 225 of 2015 was filed by the Appellant, i.e. Reliance Infrastructure Limited, in its capacity as a Distribution Licensee, under Section 111 of the Electricity Act, 2003 against the order dated June 26, 2015 passed by the Maharashtra Electricity Regulatory Commission in Case No. 222 of 2014 relating to Mid-Term Review (MTR) Petition for the Second Control Period from FY 2012-13 to FY 2015-16. The Appellant at the relevant time, was holding the license to distribute electricity to retail consumers in Suburban Mumbai and is the erstwhile owner of the Mumbai distribution business.

3. The Appellant through a Share Purchase Agreement (“SPA”) dated December 21st, 2017 transferred the whole of the identified undertaking and properties of the power generation, transmission and distribution divisions of the Appellant to REGSL. As per this arrangement, which was approved by the Bombay High Court all reserves, debts, liabilities, contingent liabilities, legal proceedings, duties and obligations of every kind, nature and description of the Appellant pertaining to power generation, transmission and distribution divisions were transferred to or were deemed to be transferred to REGSL. It was also proposed that REGSL will be the successor of the Appellant vis-à-vis the transferred divisions.

4. Concurrently with the aforesaid, the Applicant’s 100% shares were purchased by ATL. The share purchase by ATL was completed on August 28, 2018 and thus, the Applicant (now wholly owned by ATL) came to own the entire Mumbai Power Division, previously owned by R-Infra/the Appellant. The Appellant’s distribution license and the entire electricity

distribution business of Mumbai area was transferred to the Applicant.

5. The Appellant has submitted that as per the scheme of Arrangement, the Applicant is the Successor-in-interest of the Appellant in relation to Mumbai Power Division and is a necessary party to prosecute the present Appeals in its name.
6. The Applicant has submitted that in terms of transfer of the Distribution License and distribution business of the Appellant, the Appellant has no locus standi to carry on the present Appeals in its own name and would not be in a position to pass-on the impact of outcome of the present Appeals, whether positive or negative, to Applicant's customers since the Appellant having transferred its business has ceased to exist as a Distribution Licensee for the specified areas.
7. The Applicant have also submitted that earlier in two cases one before this Tribunal and the other before the Hon'ble Supreme Court, the Appellant have agreed for substitution of the Appellant with the Applicant and, therefore, Appellant cannot be allowed to backtrack. They further state that they do not wish/want the present Appellant to continue the prosecution of appeals. However, the present Appellant opposes the application on the specious ground that the Applicant is not an 'aggrieved' party.
8. The State Commission while allowing the transfer of the Distribution License from the Appellant to the Applicant has stated as under:

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It is clarified that after assignment of the Distribution License to REGSL, the consumer shall interface only with REGSL even for prior period claims, and REGSL and Rlnfra shall mutually settle such claims in accordance with the Scheme of Arrangement.

9. The Applicant has submitted that he is the necessary party to the present Appeal and it must be substituted as the appellant in place of Reliance Infrastructure Limited/Appellant.

10. It is, therefore, established that the Applicant is the Successor-in-interest to the Appellant in relation to Mumbai Power Division and is the necessary party to prosecute and / or defend the present Appeals which admittedly pertain to certain items being disallowed by the MERC as part of the Annual Revenue Requirement (ARR) of the Distribution Licensee for the years 2012-13; 2013-14; 2014-15; and 2015-16. Any allowance or disallowance in the ARR of a Distribution Licensee impacts the consumer tariff and will need to be recovered from or paid to the consumers by the Distribution Licensee alone. Therefore, any order or outcome in the present Appeals can only be implemented or further challenged by the Applicant in its capacity as the Distribution Licensee of Mumbai suburban areas to the exclusion of the Appellant.

11. The Applicant has also submitted that the Appellant has relied heavily on clause 9.19.1 of the SPA.

“9.19.1 as more particularly specified in Part A of Schedule 20

(“Seller RAUA Disputes”), the Seller URA Disputes shall be managed by the Seller at its own cost and expense, and the Seller shall keep the Company and the Purchaser informed of all material developments, and consult with the Purchaser in advance and incorporate all reasonable suggestions of the Purchaser. Provided however that if any filings are to be made by the Seller and/or the Company which have an impact on the Mumbai Power Division, all such filings shall be made with the joint consultation with the Purchaser and/or the Company; and”

12. Reliance placed by the Appellant on Clause 9.19.1 of the SPA is misplaced and is based on a selective reading of the SPA provisions. If the parties’ intent was that all past proceedings or proceedings relating to RAUA ought to be prosecuted in the name of the Appellant, the parties would not have agreed for the Company, i.e. Adani Electricity Mumbai Limited to file appeals and proceedings for financial years 2015-16, 2016-17 and April 1, 2017 to August 28, 2018 (admittedly falling prior to the Closing Date) under Clause 9.4 of the SPA and also for any new proceedings having an impact on the RAUA pursuant to Clause 11 of the SPA. As a matter of fact, the Company/AEML has already filed Appeal Nos. 105 of 2019 and 106 of 2019 which are also appeals against the orders of MERC prior to the Closing Date. Appeal. No. 105 of 2019 pertains to truing-up of ARR for FY 2015-16 and FY 2016-17 and provisional truing up of ARR for FY 2017-18 for the transmission business of the Company. Appeal. No. 106 of 2019 pertains to truing-up of ARR for FY 2015-16 and

FY 2016-17 and provisional truing up of ARR for FY 2017-18 for the distribution business of the Company. Both these appeals would also fall under Part A-2, Item 2 of Schedule 20 to the SPA but the Appellant has never objected to such appeals being filed in the name of the Company knowing fully well that having transferred the distribution and transmission licenses and related business undertakings to the Applicant/Company as part of the Mumbai Power Division, the Appellant did not have any locus standi to file such appeals in its own name. No reason or explanation has been furnished by the Appellant as to why a different standard or yardstick should be applied to the present appeals which also pertains to items allowed/disallowed as part of tariff for the period prior to the Closing Date.

13. The Applicant has also relied upon the judgments of the Hon'ble Supreme Court in the matter of i) Bhagwan Dass Chopra Versus United Bank of India And Others 1987 (Supp) SCC 536 ii) Government of Orissa Versus Ashok Transport Agency And Others ¹(2002) 9 SCC 28 & iii) Dhurandhar Prasad Singh v. Jai Prakash University and Others[(2001) 6 SCC 534]
14. On the basis of the principles held in the above judgments the Applicant has submitted that the Applicant is a necessary party as the Successor-in-interest of the Appellant in relation to the Mumbai Power Division, which includes pending Appeals, and deserves to be impleaded and substituted as the Appellant in the present Appeals.

15. **Per contra**, the Appellant vide their IA No. 1246 of 2019 in Appeal No. 225 of 2015 have sought the following reliefs:
- (a) Allow impleadment of Adani Electricity Mumbai Limited as Respondent No.7 to the present Appeal;
 - (b) Direct the Amended memo of Parties which is annexed as Annexure 1 to the present application be taken on record;
 - (c) Pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.
16. The Appellant have submitted that though considering the provisions of the SPA, it is not necessary that the Applicant be even impleaded as a party. However, in order to give a reasonable and fair opportunity to AEML, RInfra had filed the said IA to implead AEML.
17. The Appellant have submitted that as per SPA R-Infra has the right to pursue the present set of appeals. R-Infra's rights do not completely subsume in those of AEML. Since the amounts in question pertain to past periods, before ATL took over REGSL, therefore, it is only R-Infra which has an interest in the matter.
18. AEML is not a 'person aggrieved' as per Section 111 of the Electricity Act, 2003. Hence, AEML does not have *locus standi* before this Tribunal to prosecute the present matter as an Appellant.

19. The Appellant has submitted that in Clause 9.1 of the SPA read with Clause 9.2 and schedule 20 of SPA, the parties agreed that the undertakings related to the Mumbai Power Division and assets which were being transferred to AEML, do not include the amounts specified therein, which were deemed to have been retained by and belong and accrue to R-Infra by an overriding title in favour of R-Infra at all points of time and as a matter of fact even before such accrual.
20. The Appellant have submitted that by virtue of Clause 9.2.1 (B) of SPA AEML has been indemnified from the outcome of present Appeals and hence has no locus to prosecute the same as an Appellant by substitution of RInfra.
- (a) The parties having agreed under the SPA that it is R-Infra's primary responsibility insofar as pursuing the present set of appeals are concerned since the monetary impact thereof, whether positive or negative, would be to the account of R-Infra or accrued to R-Infra as the case may be; and
- (b) MERC has also passed Orders dated 28.06.2018 recognising the aforesaid arrangement in respect of claims and liabilities of the transferred business up to the Appointed Date.
- (c) In fact, ATL submitted before MERC as under:

“19. In compliance of the above-mentioned notice issued by the Commission, ATL submitted its

affidavit dated February 10, 2018. In the Affidavit, ATL made the following submissions:

- a) The Petitioners have submitted all the required details of the Respondent ATL at Annexure 3 of the Addendum.*
 - b) RInfra and ATL have, in the SPA, agreed for the treatment of any positive or negative impact of all the cases/issues, which pertain to the period upto closing date, in line with the prayer of RInfra.”*
- (d) Under Clause 9.1 and 9.2 read with Schedule 20 of the SPA, it is clear that any amount receivable under the present set of Appeals would accrue to R-Infra.
 - (e) The financial impact of the present set of Appeals would only be on R-Infra and not AEML. Notably, during the course of arguments, this fact was also conceded/accepted by AEML that in the event the present set of Appeals are dismissed, there would be no adverse impact, financial or otherwise, on AEML.
 - (f) SPA forms basis/foundation of AEML’s right to acquire the Distribution Business of R-Infra and the same SPA is also the basis to determine the relationship between AEML and R-Infra, and its consequent impact on the disputes pending prior to the Appointed Date.
 - (g) The agreed terms of the SPA, as recorded extensively in the Order dated 28.06.2018 passed by MERC, in fact, in unequivocal terms empowers R-Infra to prosecute the

present set of Appeals. Therefore, the assertion made by AEML is wholly without merit and is liable to be rejected.

21. Before deciding the issue of substitution as raised by AEML, it would be crucial for this Tribunal to examine whether, if substitution is permitted, the Appeal would be sustainable or not i.e. whether the Appellant if permitted to be substituted would be a 'person aggrieved' or not. In other words, this Tribunal would be required to examine whether AEML is a "person aggrieved" under the Act. Section 111 of the Act provides as follows:

"Section 111: Appeal to Appellate Tribunal

(1). Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying and penalty shall, while filling the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

22. Section 111 (1) enables any person aggrieved to file an Appeal against an Order passed by the appropriate Commission.

Therefore, as a sequitur, it would be relevant to examine the definition of the term “person aggrieved”. In this regard, it would be relevant to note that the definition of “person aggrieved” is no more *res-integra*. In the case of GRIDCO Vs. Jindal Stainless Ltd., Judgment dated 17.04.2009 in Appeal No. 40 of 2009, this Hon'ble Tribunal held that “a person aggrieved” must be a person who has suffered a legal grievance by a decision of the Appropriate Commission. The relevant extract is as follows:

“17. Before dealing with this question, it would be appropriate to refer to the ratio decided by the Supreme Court in various authorities cited by both the Counsel, in regard to the locus standi of the party to file an Appeal as an aggrieved person. Those propositions are as follows:

i. A person who was not made a party to the original proceedings may still file an Appeal with leave of the Appellate Court, provided that the person claiming himself to be the aggrieved party shall make out a prima-facie case as to how he is prejudiced.

ii. A person can be said to be aggrieved by an Order only when it causes him some prejudice in some form or another. Unless the person is prejudicially or adversely affected by the Order, he cannot be entitled to file an Appeal as an aggrieved person.

iii. The words ‘person aggrieved’ did not mean a man who is merely disappointed of a benefit which he may have received if some other order had been passed; the person aggrieved must be a person who has suffered a legal grievance; a person against whom a decision has been

pronounced, which has wrongfully deprived him of something; or

wrongfully refused him of something; or wrongfully affected his title to something.

iv. When a person had not been deprived of a legal right; when he has not been subjected to a legal wrong; when he has not suffered any legal grievance; when he has no legal peg for a justifiable claim to hang on; he cannot claim that he is a person aggrieved.”

23. Reliance is also placed on the following cases, detailing and settling the position on the issue if “person aggrieved”:

(a) This Tribunal’s Judgment in *Pushpendra Surana vs. Central Electricity Regulatory & Ors.*, 2014 SCC Online APTEL 48, at para 16 and 18:

“16. In term of the aforesaid propositions, in order for the Appellant to be a “person aggrieved”, the Appellant should have:

(a) Suffered a legal grievance;

(b) Suffered a legal injury; or

(c) Been deprived of something it was entitled to;

.....

18. At this juncture, it shall be stated that the very same question had been raised in another matter before this Tribunal in IA No. 392 batch of 2012 with similar facts in which, order has been passed by this Tribunal on

20.12.2012 in the case of Bharat Jhunjhunwala v. Uttar Pradesh Electricity Regulatory Commission wherein we have decided that the party who is a mere member of the public cannot file an Appeal by seeking leave to file an Appeal claiming that the party has got the public interest in the absence of the ingredients to satisfy the definition of the term “consumer”.

- (b) The Hon'ble Supreme Court's Judgment in *Ayaaubkhan Nookhan Pathan vs. State of Maharashtra*, (2013) 4 SCC 465, at para 10 and 17:

*“10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji v. Home Insurance Co. of New York* [(1974) 2 SCC 387 : AIR 1974 SC 1719] and *State of Rajasthan v. Union of India* [(1977) 3 SCC 592 : AIR 1977 SC 1361].)*

.....

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury.

Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.”

24. Findings:

- i) The present Appeal have been filed by the Appellant in its capacity as a Distribution Licensee against order passed by the MERC in a case relating to mid-term review.
- ii) With the transfer of the Appellant’s assets and its business along with all permits and licenses, suits and legal proceedings relating to the Mumbai power division to REGSL which is now owned by ATL and has been renamed as the Applicant. The Appellant’s business and its distribution license stands transferred to the Applicant. The Applicant AEML is now the new Distribution Licensee in place of the Appellant.
- iii) The State Commission while allowing the transfer of the Distribution License from the Appellant to the Applicant has clarified that after assignment of the Distribution License to REGSL, the consumer shall interface only with REGSL even for prior period claims, and REGSL and RInfra shall mutually settle such claims in accordance with the Scheme of Arrangement.”
- iv) As per Electricity Act, 2003 tariff matters are to be pursued by the Distribution Licensee and the present appeal is of tariff matter and this can be pursued by a Distribution Licensee only. The moment the Applicant stepped into the shoes of Distribution Licensee, the tariff matters will be pursued by him only. In view of

this background we do not agree with the submissions made by the Appellant that as per SPA the legal proceedings previously initiated and carried on in the name of the Appellant in its capacity as Distribution Licensee shall continue to be prosecuted in the name of the appellant even now after the transfer of the distribution divisions and license to the Applicant.

- v) Also it is precisely for this reason, the Share Purchase Agreement have a detailed arrangement to deal with the “Seller RAUA Disputes”. As per Clause 9.19.1 of the SPA, the “Seller RAUA Disputes” shall be managed by the seller at its own cost and expenses and the seller shall keep the company and the purchaser informed of all material developments and consult with the purchaser in advance and incorporate all reasonable suggestions of the purchaser.
- vi) From the reading of the Share Purchase Agreement (“SPA”), it is clear that the agreement provides for payment of amounts that may be recovered by the company of Appellant on account of litigations pertaining to the period prior to closing date between the seller and the purchaser.
- vii) Clause 9 of the SPA entitles the Appellant to certain amounts or receivables that may crystallise or to be recovered by the Distribution Licensee in relation to such past legal proceedings. It deals with the Appellant mechanism in respect of funds.
- viii) The concern of the Appellant regarding prosecution of the issues relating to recovery of all regulatory assets under approval have

been very well covered under the provisions of the SPA wherein a detailed procedure/system has been defined regarding management of disputes. However, the Appellant apprehend that the case of the “Seller RAUA Disputes” may not be effectively taken up by the Applicant in the capacity of the present Distribution Licensee. We have considered the submission of the Appellant and we are of the opinion that in the interest of equity and to meet the ends of justice, the Appellant be on record as proforma appellant, but Applicant (Purchaser/licensee) has to effectively prosecute the appeal since Applicant is a necessary and proper party to prosecute the appeal.

- ix) In view of the foregoing discussion the issue raised by the Appellant regarding the “person aggrieved” is not relevant to this case and thus not considered.

ORDER

In view of the reasons given above, the Applicant (AEML) be impleaded as Appellant in all the appeals. Appellant shall be proforma appellant.

List the main appeal for hearing on **24.10.2019.**

Pronounced in the Open Court on this **6th Day of August, 2019.**

(Ravindra Kumar Verma)
Technical Member

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(Justice Manjula Chellur)
Chairperson

REPORTABLE/NON-REPORTABLE

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