

BEFORE THE APPELLATE TRIBUNAL FOR
ELECTRICITY
(APPELLATE JURISDICTION)

APPEAL NO. 193 OF 2010

Dated : 5th April, 2011

Coram:Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S.Datta,
Judicial Member

In the matter:

Powergrid Corporation of India Ltd.
Suadamani, Plot No.2, Sector 29,
Gurgaon 122001
Haryana.

...Appellant

Versus

1. Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001.
2. Karnataka Power Transmission Corporation Ltd.
Kaveri Bhawan, K.G. Road,
Banglore-560 009.
3. Transmission Corporation of Andhra Pradesh Ltd.,
Vidyut Soudha, Khairatabad, Hyderabad-500 082

4. Tamil Nadu Electricity Board
144, Anna Salai,
Chennai-600 002.
5. Electricity Department, Government of Puducherry
58, NSC Bose Salai,
Puducherry- 605 001.
6. AP Eastern Distribution Company Ltd.,
Sai Shakthi Bhavan,
30-14-09, Near Saraswathi Park,
Visakhapatnam-530 020 (AP)
7. AP Southern Power Distribution Company Ltd.
(APSPDCL)
H.No. 193-93 (M) Upstairs
Renigunta Road, Tirupathi-517 501 (AP)
8. AP Northern Power Distribution Company Ltd.
(APNPDCL)
H.No. 1-1-504, Opp.: NIT Petrol Pump,
Chaitanyapuri, Warangal- 506 004 (AP)
9. AP Central Power Distribution Company Ltd.
(APCPDCL)
Singareni Bhavan, Red Hills, Hyderabad-500 063.
10. Bangalore Electricity Supply Company Ltd. (BESCOM)
Krishna Rajendra Circle
Bangalore- 560 009.

Counsel for the Respondent(s): None

JUDGMENT

HON'BLE MR. JUSTICE P.S. DATTA, JUDICIAL MEMBER

This appeal is at the instance of Power Grid Corporation of India Limited, a Central Government enterprise engaged in the activities of interstate transmission of electricity with discharge of statutory function of Central Transmission Utility and Regional Load Dispatch Centre, being aggrieved with the order dated 20th August, 2010 passed by the Respondent No. 1, Central Electricity Regulatory Commission whereby the said Central Commission has determined the revision in transmission tariff for the period 2004-2009 on account of de-capitalization and additional capitalization incurred during the year 2008-2009 on the Ramagundam Transmission System in the Southern Region

of the Appellant-Powergrid Corporation of India Limited.
Respondent No.2-16 are the beneficiaries of the said system.

2. Be it noted that on 26th March, 2001 the Central Commission notified the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Regulations, 2001 governing the determination of tariff for the transmission activities of the Appellant for the period from 1st April, 2001 to 31st March, 2004, and then the said Commission notified a fresh regulation in 2004, called the tariff Regulation, 2004, governing the tariff determination for the activities of the Appellant for the period from 1st April, 2004 to 31st march, 2009.
3. On 31st March, 2009, the Appellant filed a petition being petition No. 76 of 2009 for revision of tariff on account of additional capitalization for the period from 1st April

2008 to 31st March, 2009 in respect of the Ramagundam Transmission System. By order dated 7th August, 2009, the Central Commission decided the petition No. 76 of 2009 allowing the tariff revision but it is the case of the Appellant that it appeared that interest on loan to be allowed to the appellant on the additional capitalization had been substantially affected on account of mechanical implementation of adjusting the total depreciation of the capital assets against the loan repayment on the loan taken to fund the additional capitalization only. It means, no interest on loan was allowed to the appellant although the appellant has paid such interest. The appellant then filed a petition being petition No. 235 of 2009 before the Central Commission with the following prayers:

“It is respectfully prayed that the Hon’ble Commission may be pleased to

i) approve the IOL on De-Capitalization and additional Capitalization for 2008-09

ii) approve the revised transmission tariff with De-Capitalization and additional Capitalization incurred during 2008-09 for the assets covered under this application by considering IOL portion

iii) Pass such other relief as Hon’ble Commission deems fit and appropriate under the circumstances of the case and in the interest of justice”

4. Thus it was the case of the Appellant that interest on loan should be allowed on the loan of additional capitalization separately instead of allowing it on cumulative basis and adjusting the same against the depreciation on the entire capitalized asset.

5. The Central Commission by order dated 20th August, 2008 rejected the petition of the appellant holding as follows:

“7.As per the provisions of Regulation 54 of 2004 regulations, any additional capital expenditure admitted by the Commission shall be recovered in the debt equity ratio specified in Regulation 54. In accordance with the provisions of Regulation 54, the net amount of additional capitalization of Rs.205.21 lakh has been apportioned between debt and equity in the ratio of 70:30. Depreciation is calculated considering the additional capitalization and de-capitalization. Depreciation is considered for repayment of loan on account of harmonious construction of the following provisions of the 2004 regulations:

(a) As per Regulation 56 (i)(f), "In case the moratorium period is availed of by the transmission licensee, depreciation provided for in the tariff during these years of moratorium shall be treated as repayment during these years and interest on loan capital shall be calculated accordingly.

(b) Regulation 56(ii)(a)(iii) provides that on repayment of entire loan, the remaining depreciable value shall be spread over the balance useful life of the assets.

(c) Proviso to Regulation 56 (ii)(b) provide that Advance Against Depreciation shall be permitted only if the cumulative repayment up to particular year exceeds the cumulative depreciation up to that year and Advance Against Depreciation shall be restricted to the

extent of the difference between cumulative repayment and cumulative depreciation up to that year.

The above provisions of the 2004 regulations clearly establish that depreciation allowed in tariff should be considered for repayment of loan.

8. In case of the transmission system, the entire loan was repaid by 31.3.2005. Therefore, the depreciation admissible to the petitioner is sufficient to cover the loan liability arising out of the additional capitalization for the year 2008-09.

Due to this reason, the petitioner had not claimed any interest on loan on account of additional capital expenditure in Petition No. 76/2009.

During 2008-09, depreciation allowed is only

Rs.619.37 lakh which is sufficient to cover the notional loan liability of Rs.143.65 lakh arising out of additional capitalization during 2008-09.

Therefore, the petitioner does not have a case for interest on loan component of additional capitalization when it is getting sufficient funds to cover the loan liability.

9. The expenditure on additional capitalization has been apportioned between debt and equity in the ration of 70:30. The notional equity of Rs.61.56 lakh will fetch the petitioner Return on Equity @14% during 2008-09 and 17.481% for the period 2009-14 on perpetual basis, even though the actual equity invested is only Rs.0.21 lakh. In our view, the interest of the petitioner

has been adequately taken care of and there is no justifiable reason to allow interest on loan as claimed in the present petition.

10. Accordingly, Petition No. 235/2009 is dismissed being devoid of merit"

6. The Appellant incurred capital expenditure of additional capitalization in the sum of Rs.293.07 lakhs in aggregate. The asset replaced which was de-capitalized was of the value of Rs.87.86 lakh. Therefore, the net capitalization came to Rs.205.21 lakh after adjusting the value of de-capitalized asset of Rs.87.86 lakhs. The aggregate capital expenditure when apportioned on a debt and equity ratio of 70:30 comes to Rs.205.149 lakhs as debt and Rs.87.92 lakhs as equity. The net capital expenditure of

Rs.205.21 lakhs when apportioned on debt equity ratio of 70:30 works out to Rs.143.65 lakh as debt and Rs.61.65 lakh as equity. The actual interest outflow to the Appellant on the loan taken works out to Rs.18.88 lakh.

7. The questions on the above position are as follows:
 - a) Whether the Central Commission was right in following the principle of depreciation amount to be considered for adjustment against the repayment of loan.
 - b) Whether in terms of Regulations 54 and 56 of the Tariff Regulations 2004, while considering the apportionment of interest on loan to be allowed can the Central Commission determine the adjustment of the depreciation amount of the entire asset against

the repayment of loan connected with the additional capitalization.

8. Of the 16 Respondents, none appeared even though notices were served twice upon all including the Central Electricity Regulatory Commission, the respondent No. 1 herein.
9. We have heard Mr. M.G. Ramachandran appearing with Ms. Swapna Seshadri, learned Counsel for the Appellant. It is argued by Mr. Ramachandran at the outset that this Tribunal by its judgment and order dated 13th March, 2007 in NTPC Ltd. V/s. CERC & Others and the Hon'ble Supreme Court in Delhi Electricity Regulatory Commission V/s. BSES Yamuna Power Limited & Others (2007) 3 SCC 33 clearly held that depreciation should not be

considered as normative loan repayment and the Central Commission committed error in equating the depreciation with normative loan repayment. The purpose of depreciation is to allocate the amount of depreciation of an asset over its useful life so as to exhibit a true and fair view of the financial statement of the enterprise. It is argued that the depreciation is not a source of funding for the current year but for funding the replacement cost of the asset. Depreciation is thus the allocation of cost so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset and as such, it must not be linked in any manner to the loan repayment. The Central Commission committed error by treating depreciation for the purpose of repayment of loan

thereby as a tool for funding of the interest on loan liability for the current year. Further, the Central Commission committed error in calculating the loan amount taken for additional capitalization to be serviced on net basis i.e. Rs.205.21 lakh as against Rs.293.07 lakh and further depriving the Appellant of the interest on loan on the additional capitalization by adjusting the total depreciation i.e. the depreciation amount pertaining to the entire capital assets including the existing assets as was made before additional capitalization. It is further argued that the Central Commission erred in not allowing the actual interest on loan being paid by the Appellant, namely Rs.13.22 lacs per annum on a normative loan of Rs.143.65 lacs being 70% of the amount of additional capitalization after adjustment

of de-capitalization of the removed assets. This would be the proper course for the Central Commission to follow. The Central Commission has failed to appreciate that there exists an actual payment of interest on loan, to the extent the depreciation amount cannot be adjusted even assuming for the same of arguments but not admitting that the principles of adjusting depreciation against loan repayment is held to be valid and justified. The Central Commission has proceeded on an incorrect basis which deprives the Appellant of the legitimate claim for servicing the loan taken. The Central Commission has failed to appreciate that the provisions of the Tariff Regulations cannot be interpreted in a manner that the actual payment of interest to the lenders is

excluded and the concept of depreciation being adjusted against the loan would arise only in the case of the amount of loan not being serviced at all, for example by reason of moratorium etc. The Central Commission has proceeded on the wrong basis that only Rs.143.65 lacs is the notional loan by applying the debt : equity ratio of 70:30 to the net additional capital expenditure of Rs.205.21 lacs when the Appellant has actually funded the total additional capital expenditure of Rs.293.07 lacs by taking a loan of Rs. 205 lacs”

10. Having heard the learned Counsel for the Appellant, it appears that the Commission proceeded on the basis that depreciation allowed is intended for repayment of loan and there will be deemed

repayment of loan to the extent of the depreciation as made available. So far as this Tribunal is concerned, it had occasion to examine this exact issue in a batch of appeals being No. 139 & 15 others of 2006 and 10, 11 to 23 of 2007 (NTPC Ltd. V/s. CERC & Others) where it was held that the computation of outstanding loan would be on a normative basis only instead of normative or actual whichever is higher, and this being so, there is no question of any adjustment of the depreciation amount to a deemed repayment of loan. It was clarified that the depreciation is an expense and not an item allowed for repayment of loan because if an entity does not borrow, it would not mean that it would not be given any depreciation. Being an expense, it represents a decline in the value of asset because

of wear and tear. In this decision there is reference to the Accounting Principles Board of USA defining depreciation as under:

“The cost of productive facility is one of the costs of the service it renders during its useful economic life. Generally accepted accounting principles require that this cost be spread over the expected useful life of the facility in such a way as to allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation”.

This position was confirmed by the Hon'ble Supreme Court in the decision reported in Delhi Electricity Regulatory Commission V/s BSES Yamuna Power Limited & Others (ibid). It appears that the Central Commission referred to Regulations 54 and 56 of the CERC (Terms and Conditions of Tariff) Regulations 2004 in support of their proposition that depreciation is considered for repayment of loan. Regulation 56(i)(f) of the said Regulation runs thus *"In case of any moratorium period is availed of by the transmission licensee, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly"* The Commission referred to Regulation 56 (ii)(a)(iii) to say that on repayment of the entire loan, the depreciable value

shall be spread over the balance useful life of the asset. The Commission further read Regulation 56 (ii)(b) which provides that the transmission licensee shall be entitled to advance against depreciation in the manner as laid down therein. The learned Counsel for the appellant rightly submitted that Regulation 56 (i)(f) is totally inapplicable in the instant case. There was no question of transmission licensee having availed of moratorium period, as such, there is no question of depreciation being considered as repayment and accordingly interest on loan capital cannot be calculated in the manner as made by the Commission. None of the provisions of regulation 56 of the Regulation, 2004 account for the factual conditions as presented above, and they do not give rise to any premise that depreciation has to

be linked to repayment of loan. The finding of the Commission militates against the decision of this Tribunal according to which depreciation is an expense and cannot be deployed for deemed repayment of loan. The appellant incurred capital expenditure on additional capitalization of Rs.293.07 lacs and after adjusting the value of de-capitalized assets, the net capital expenditure came to Rs.205.21 lacs. It implies that transmission licensee was denied interest on loan of additional capitalization by adjusting the total depreciation that covered the entire capital assets. In the normative debt equity ratio of 70 : 30 the amount of interest on the normative loan of Rs.143.65 lacs would have been legitimately due to the appellant.

11. In this view of the matter, the respondent No. 1 is required to make a fresh computation of interest on loan in the light of the settled principle as formulated in the decision above.
12. Accordingly, the appeal is allowed and the impugned order is set aside. The matter is remitted back to the respondent No.1 for fresh decision in the light of the observations made above.

(Justice P.S.Datta)
Judicial Member

(Mr. Rakesh Nath)
Technical member

Dated : 5th April, 2011

Index: Reportable/Non-Reportable

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