

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

APPEAL NO. 257 OF 2016

Dated: 09th May, 2019

**PRESENT: HON'BLE MRS. JUSTICE MANJULA CHELLUR, CHAIRPERSON
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER**

IN THE MATTER OF:

Torrent Power Limited,
Having its Registered Office at
Torrent House, Off Ashram Road,
Ahmedabad – 380009, Gujarat

....Appellant

VERSUS

Gujarat Electricity Regulatory Commission
Having its Office at
6th Floor, GIFT ONE,
Road 5 C, Zone 5, GIFT City,
Gandhinagar – 382355.

.... Respondent

Counsel for the Appellant : Ms. Deepa Chawan
Mr. Hardik Luthra
Mr. Ravindra Chile
Mr. Tapan

Counsel for the Respondent : Ms. Shikha Ohri
Ms. Ankita Bafna

JUDGMENT

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present Appeal has been filed by Torrent Power Ltd. (hereinafter referred to as the “Appellant”) under Section 111 of the Electricity Act, 2003 challenging the Order dated 31.03.2016 (“Impugned Order”) passed by the Gujarat Electricity Regulatory Commission (hereinafter referred to as the 'Commission') in Case No. 1551 of 2015 relating to the Truing up of FY 2014-15, Approval of Provisional ARR for FY 2016-17 and Determination of Tariff for FY 2016–17 for Torrent Power Limited – Generation, Ahmedabad.
- 1.1 The Appellant has challenged the said order of the Respondent Commission to the extent it relates to:
 - A) Erroneous computation of interest expenses
 - B) Disallowance of Carrying Cost

During the proceeding, the Appellant had filed its note on 20.02.2019 in respect of Ground B i.e. disallowance of carrying cost and submitted that it had raised this ground as the Impugned order was silent on the carrying cost claimed by the Appellant. However, the Respondent Commission has passed the subsequent order on 08.06.2017 in respect of Appellant’s Distribution Business and therefrom, it has reasoned to believe that the issue of carrying cost has been dealt with by the Respondent Commission in its Distribution ARR. In turn, the Respondent Commission also confirmed the understanding of the

Appellant vide its submission dated 11.03.2019. Therefore, the issue relating to the carrying cost stands settled. **Thus, the only issue to be dealt with in the present Appeal is Erroneous Computation of Interest Expenses raised by the Appellant.**

2. Brief Facts of the Case:-

2.1 The Appellant, Torrent Power Limited (*TPL*) is a company formed under the provisions of the Companies Act, 1956. The Appellant is in the business of generation and distribution of Electricity.

2.2 The Respondent is the Gujarat Electricity Regulatory Commission (GERC, established under the provisions of the Electricity Regulatory Commission Act, 1998 presently repealed and so continued in office, by virtue of Section 82 of the Electricity Act, 2003.

3. Questions of Law:-

The Appellant has raised following questions of law for our consideration:-

3.1 Whether the methodology adopted by the Respondent Commission in respect of computation of interest expenses in the impugned order is in consonance with the provisions of the Act and the relevant Regulations framed there under?

3.2 Whether the impugned order contravenes any provisions of the Electricity Act, 2003 and the relevant Regulations framed there under?

3.3 Whether the impugned order dated 31.03.2016 is in conformity with the statutory stipulations relating to the MYT framework?

4 Learned counsel, Ms. Deepa Chawan, appearing for the Appellant has filed following written submissions for our consideration:-

- 4.1** The Appellant added assets worth Rs. 41.76 Crores, during F. Y. 2014-15. The Appellant also retired assets worth Rs. 84.96 Crores in the FY 2014-15. The Appellant stated in its petition that in respect of the assets retired, there was outstanding loan of Rs.13 Crores in the books of Account of the Appellant. The Appellant therefore requested the Respondent Commission to consider deletion of only Rs. 13 Crores for computing net capitalization to arrive at the allowable debt component for the year. (i.e. $41.76 - 13 = 28.76$)
- 4.2** The Appellant has referred to the 2nd Proviso to Regulation 39.1 of the GERC (Multi Year Tariff Framework) Regulations, 2011 which provides for the treatment towards interest and finance charges on loan capital. Regulation 39.1 reads as under:

“39 Interest and finance charges on loan capital

39.1 The loans arrived at in the manner indicated in Regulation 34 shall be considered as gross normative loan for calculation of interest on loan:

Provided that interest and finance charges on capital works in progress shall be excluded:

Provided further that in case of retirement or replacement of assets, the loan capital approved as mentioned above, shall be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.”

- 4.3** Thus, the 2nd Proviso to Regulation 39.1 clearly provides that in case of retirement of assets the loan component shall be reduced to the extent of outstanding loan component based on the documentary evidence. In support of its case, the Appellant had submitted documentary evidence in respect of the said claim being the

Certificate dated 24.01.2016 issued by the Statutory Auditor. In spite of the same, the Respondent Commission has not considered the request of the Appellant and has considered the deduction of total value of retired assets for computation of net capitalization to arrive at the allowable debt component for the year. (i.e. $41.76 - 84.96 = (-) 43.20$)

- 4.4** The Auditor's Certificate clearly substantiated the claim made by the Appellant and cannot be disregarded. The Certificate dated 24.01.2016 issued by the Statutory Auditor clearly shows that, out of total retired assets of Rs. 84.96 Crores, Rs.71.96 crores assets were capitalised up to 31.03.2007 and only Rs. 12.99 crore assets were capitalized thereafter from 01.04.2007. The Statement in the Certificate also clearly states that there are no outstanding loans as on 31.03.2015 which were received prior to 31.03.2007.
- 4.5** The Appellant had addressed a letter dated 10.02.2016 to the Respondent Commission placing the said certificate dated 24.01.2016 issued by the Statutory Auditor as documentary evidence. It was specifically pointed out that this would meet the requirement under Regulation 39.1. In a Tariff proceeding, the Respondent Commission determines tariff upon technical validation, response to data gap, addresses various queries which have to be responded to by the Utilities besides the Public Hearing contemplated under Section 64(3) of the Electricity Act, 2003. Without Prejudice to the contentions of the Appellant that the Certificate of the Statutory Auditor was a sufficient documentary evidence and in light of the Appellant approaching the Respondent Commission and placing the certificate on record, if any further

requirements were to be satisfied by the Appellant, the Respondent Commission ought to have apprised the Appellant of the same. The operation of the 2nd Proviso to Regulation 39.1 cannot be denied to the Appellant when the Appellant has approached the Respondent Commission by placing the documentary evidence on record.

- 4.6** It is pertinent to note that the Respondent Commission has admitted the retirement of the asset which is not in dispute. The Respondent Commission has in spite of acknowledging the certificate submitted has noted that the Appellant has not submitted any documentary evidence to show that the loan outstanding i.e. Rs. 13 Crore relates to the assets withdrawn.
- 4.7** The Respondent Commission has further mentioned that the Appellant has also not submitted year wise breakup of the assets withdrawn against which outstanding loan is claimed. It has further noted that in the absence of such year-wise details and year-wise repayment of loan by way of depreciation, the claim of the Appellant could not be validated. The Appellant would like to point out that no such information was requisitioned by the Hon'ble Commission.
- 4.8** The Respondent Commission has missed out the very important aspect i.e. purpose of seeking such documentary evidence. The documentary evidence is required to ascertain that the interest expenses pertaining to loan availed to create such assets should not be charged to the consumers. To meet with this requirement, the Appellant has submitted the Statutory Auditor's Certificate specifying that there is no loan as on date which was availed prior to 1st April, 2007. This meets the very purpose of the Regulations and

accordingly, the Respondent Commission should have not deducted the loan component corresponding to the retired assets which was created prior to 1st April, 2007.

- 4.9** Due to such decision taken by the Respondent Commission the loan component of the Appellant has been thereby adversely reduced resulting in lower amount of interest expenses and thus the Appellant is subjected to financial hardship by denial of relief despite the 2nd Proviso to Regulation 39.1 being in force.
- 5. Learned Counsel, Ms. Shikha Ohri, appearing on behalf of Respondent Commission has made following arguments/submissions for our consideration:-**
- 5.1** Relying upon the Respondent Commission's impugned order, learned counsel submitted that TPL has not submitted any documentary evidence to show that the loan outstanding i.e. Rs. 13 Crore relates to the assets withdrawn. TPL has also not submitted year wise breakup of the assets withdrawn against which outstanding loan is claimed. In the absence of such year-wise details and year-wise repayment of loan by way of depreciation, the claim of the Petitioner cannot be validated. In view of above and in the absence of documentary evidence, the Commission considered the reduction of opening loan to the extent of 70% of the asset withdrawn
- 6. We have heard learned Counsel appearing for the Appellant and the learned Counsel appearing for the Respondent at consideration length of time and considered the written submissions carefully and evaluated the entire relevant material available on record. The following only one issue emerges out of Appeal for our consideration:**

- Whether the State Commission has passed the impugned order relating to the computation of interest expenses in accordance with its Regulations?

7. Our Consideration & Analysis:-

7.1 Learned counsel for the Appellant submitted that the Respondent Commission has notified the MYT Regulations. The Regulation 39 of the MYT Regulations deals with Interest and Finance Charges on loan capital. The second proviso to Regulation 39.1 (extracted supra) specifically deals with the treatment to be given in case of retirement of assets. The proviso clearly specifies that in case of retirement of assets, the loan capital should be reduced to the extent of outstanding loan component of the original cost of the retired or replaced assets, based on documentary evidence.

7.2 The counsel further submitted that accordingly, in the present case, the Appellant has submitted the Certificate of the Statutory Auditors of the Company to confirm that there is no outstanding loan pertaining to assets created prior to 31.03.2007.

7.3 *Per contra*, learned counsel for the Respondent Commission submitted that the Appellant has not submitted any documentary evidence to show the outstanding loan relates to the assets withdrawn. Further, TPL has also not furnished yearwise break-up of the assets withdrawn against which outstanding loan is claimed. Learned counsel reiterated that for want of these details, the claim of the Petitioner cannot be validated and accordingly the Commission considered the reduction of opening loan to the extent of 70% of the assets withdrawn.

8. Our Findings:-

8.1 We have carefully considered the submissions of learned counsel for the Appellant and the Respondent Commission. In line with the second proviso to Regulation 39.1, the Appellant has rightly requested the Respondent Commission for computation of loan component to deduct the assets worth Rs. 13 Crore (i.e. Rs. 84.96 Crores minus Rs. 71.96 Crores) from the addition of assets of Rs. 41.76 Crores during the year as loan capital existed towards the retired assets worth Rs. 13 Crore. In our view, the certificate issued by the Statutory Auditors, who has conducted the audit of the Company, has issued the Certificate at the specific request of the Appellant for submission to Respondent Commission in respect of deduction of fixed assets and status of outstanding loans as on 31st March, 2015, meets the requirement of Regulation 39. In fact, the purpose of seeking such documentary evidence is to ascertain that the interest expenses pertaining to loan availed to create such assets should not be charged to the consumers. Accordingly, there appears no need for the Respondent Commission to have further details of the outstanding loan component for the assets worth Rs. 13 Crores retired during the year when the Appellant has not claimed any relief towards this assets. We do not find any merit in the argument of the learned counsel for the Respondent Commission that as Appellant has not furnished the year-wise details of assets withdrawn and loan repayment, the Appellant should be denied relief as per Regulation 39.1. Hence, the impugned order suffers from legal infirmity and is liable to be set aside.

8.2 Accordingly, the appeal deserves to be allowed.

ORDER

For the foregoing reasons, we are of the considered view that the issues raised in the present appeal being Appeal No. 257 of 2016 have merit. Hence, the Appeal is allowed and the impugned order dated 31.03.2016 passed by the Gujarat Electricity Regulatory Commission in the Case No. 1551 of 2015 is hereby set aside to the extent challenged in the Appeal.

The State Commission is directed to pass the consequential orders in accordance with law and our directions, stated supra, as expeditiously as possible within a period of three months from the date of receipt of a copy of this judgement and order.

No order as to costs.

Pronounced in the Open Court on this 09th day of May, 2019.

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / NON-REPORTABLE

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