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COURT-II

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)**

**ORDER IN APPEAL NO. 27 OF 2018 &
IA NO. 692 OF 2018 ON THE FILE OF THE
APPELLATE TRIBUNAL FOR ELECTRICITY, NEW DELHI**

Dated: 03rd July, 2018

**Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. S.D. Dubey, Technical Member**

In the matter of:

**Tata Power Delhi Distribution Ltd.,
NDPL House, Hudson Lines,
Kingsway Camp,
New Delhi-110009.**

..... Appellant(s)

Versus

**Delhi Electricity Regulatory Commission,
Vinayamak Bhawan, 'C' Block,
Shivalik, Malviya Nagar,
New Delhi-110 017.**

..... Respondents

Counsel for the Appellant (s) : Mr. Gopal Jain, Sr.Adv.
Mr. Anupam Verma
Mr. Rahul Kinra
Mr. Ashutosh Kr. Srivastava
Mr. Anurag Bansal for TPDDL

Counsel for the Respondent(s) : Mr. Venkatesh
Mr. Somesh Srivastava
Mr. Samarth Kashyap

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

The Appellant has sought the following reliefs in Appeal No. 27 of 2018:

- (i) Admit the Appeal;

- (ii) Set aside the impugned order dated 31.08.2017 to the extent challenged in the above paragraphs; and
- (iii) Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

ORDER

1. The Appellant herein is questioning the legality, validity and propriety of the common order dated 31.08.2017 passed in Petition Nos. 11 of 2009, 7 of 2010 and 06 of 2013 on the file of Delhi Electricity Regulatory Commission.

The Appellant presented this Appeal for considering following Questions of Law:

- A. Whether Ld. Delhi Commission while passing the Impugned Order has failed to act in accordance with the mandate of Section 64 of the Electricity Act?
- B. Whether in terms of Section 64 of the Electricity Act, the Ld. Delhi Commission had to invite public comments / objections on the Application filed by the Appellant or on Executive Summary of the Petition issued by the Ld. Delhi Commission while passing the Impugned Order?
- C. Whether Ld. Delhi Commission had pre-judged the issues in Executive Summary since, the objections were invited only on the Executive Summary?
- D. Whether Ld. Delhi Commission has taken an arbitrary and incorrect value of Capital cost of Ramgarh GPTS at the time of taking it as benchmark for Rithala CCPP thereby denying actual capital cost to the Appellant?

- E. Whether Ld. Delhi Commission while considering case specific additional capitalization, has wrongly disallowed capex towards:-
- (i) Project Cost excluding Civil & site specific expenses
 - (ii) Charges towards effluent treatment plant
 - (iii) Other site specific expenses incurred by the Appellant towards effluent treatment plant and reservoir as provided under serial No. 2ba to 2bd in the table regarding “Capital Cost computed on bench marking principle” at Para 20 Q of the Impugned Order.
 - (iv) Interest During Construction and Infirm Fuel.
 - (v) Civil Cost Other than Piling
- F. Whether Ld. Delhi Commission is correct in disallowing the prayer of relaxation of Operational Parameters for the Rithala CCPP while similar dispensation has been given to other plants operating in GoNCTD?
- G. Whether Ld. Delhi Commission has erred in directing the Appellant to share profits generated from Rithala CCPP in accordance with the provisions of DERCD (Treatment of Income from Other Business of Transmission and Distribution Licensee) Regulations, 2005?

2. We have heard the learned senior counsel, Mr. Gopal Jain, appearing for the Appellant and the learned counsel, Mr. Venkatesh, appearing for the Respondent No.1. The other Respondents served unrepresented.

The learned senior counsel appearing for the Appellant submitted that, the instant Appeal filed by the Appellant may be dismissed as withdrawn reserving liberty to the Appellant to redress their grievances

before the appropriate legal forum and all the contentions urged in the instant appeal may be left open.

3. *Per Contra*, the learned counsel appearing for the Respondent No.1 submitted that submissions made by the learned senior counsel appearing for the Appellant, as stated above, may be placed on record and the appropriate order may be passed.

4. Submissions made by the learned senior counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1, as stated above, are placed on record.

5. In the light of the submissions made by the learned senior counsel appearing for the Appellant and learned counsel appearing for the Respondent No.1, as stated above, the instant Appeal filed by the Appellant is dismissed as withdrawn reserving liberty to the Appellants to redress their grievances before the appropriate legal forum, if they so advised or if the need arises.

6. All the contentions urged in the instant Appeal are left open.

IA NO. 692 OF 2018

7. In view of the Appeal No. 27 of 2018 on the file of the Appellate Tribunal for Electricity, New Delhi being disposed of, the prayer sought in the instant IA does not survive for consideration and hence the application is dismissed as having become infructuous.

8. Order accordingly.

(S. D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

Bn/pr