COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

DFR NO. 756 OF 2018 &
IA NOS. 629, 677, 678, 721 & 719 OF 2018

Dated: 11th July, 2018

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

In the matter of:

Laurel Apparels **…. Appellant(s)**

Versus

Karnataka Electricity Regulatory Commission & Ors. **…. Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran
Mr. Senthil Jagadeesan
Ms. Sonakshi Malhan
Mr. Shubham Arya

Counsel for the Respondent(s) : Ms. Pratiksha Mishra
for Mr. Balaji Srinivasan
Mr. Mayank Kshirsagar for R-2 & 3

ORDER
(On Maintainability)

We have heard the learned counsel, Mr. M.G. Ramachandran, appearing for the Appellant and the learned counsel, Ms. Pratiksha Mishra appearing for the learned counsel, Mr. Balaji Srinivasan for the Respondent Nos. 2 & 3.

The learned counsel appearing for the Appellant, at the outset, submitted that, in the light of the prayer sought in the Memo of Appeal, the same may kindly be accepted and the office objection raised regarding maintainability may kindly be overruled.

After careful consideration of the submissions made by the learned counsel appearing for the Appellant and after perusal of the para 21(i) of the relief sought, what has emerged is that the Appellant has prayed to set-aside the Order of the first Respondent not approving the PPA executed on 24.03.2017 between the second Respondent and the Appellant in No. KERC/S/F-54/H-208/17-18 dated 18.12.2017 since it has been passed contrary to the provisions of the Electricity Act, 2003 and, further, sought a direction directing that the PPA executed on 24.03.2017 between the second Respondent and the Appellant is final and binding, etc., and, further, in

view of the Order dated 16.03.2018 passed in DFR No. 3355 of 2017 and IA No. 843 of 2017 (Azure Photovoltaic Private Limited vs Gulbarga Electricity Supply Corporation Limited & Anr.) wherein we are of the opinion that the Orders/letters are in the nature of decisions and they can be characterized as orders and should be treated as such. In the peculiar facts and circumstances of the case, we hold that the instant appeal is maintainable.

IA No. 719 of 2018
(For Condonation of Delay in Filing the Appeal)

We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 2 & 3.

The learned counsel appearing for the Appellant submitted that, there is a delay of 150 days in filing the Appeal. Further, he quick to point out that, in the light of the submissions made and the reasoning given in para nos. 4 to 14 of the application, the delay has been explained satisfactorily and sufficient cause has been shown in the application. The same may kindly be accepted and delay in filing the Appeal may kindly be condoned and the instant application may kindly be allowed in the interest of justice and equity.

The learned counsel appearing for the Respondent Nos. 2 & 3 submitted that, the submissions made by the learned counsel appearing for the Appellant may kindly be taken on record and the instant IA may be allowed.

Submissions made by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 2 & 3, as stated above, are placed on record.

In the light of the submissions made by the learned counsel appearing for the Appellant and after perusal of the reasoning given in the application explaining the delay in filing the Appeal, we find it satisfactory as sufficient cause has been shown in the application. The same is accepted and the delay in filing the Appeal is condoned. IA is allowed.

IA No. 721 of 2018
(For Amendment)

We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 2 & 3.

The learned counsel appearing for the Appellant submitted that, the instant application has been filed by the Appellant praying for the amendment in the Memorandum of Appeal as per paras 7 I to XX of the application. The submissions made and the reasoning given in the application may kindly be accepted and amendment in the Memorandum of Appeal may kindly be allowed in the interest of justice and equity.

Submissions made by the learned counsel appearing for the Appellant, as stated above, are placed on record.

In the light of the submissions made by the learned counsel appearing for the Appellant and after careful perusal of the reasoning given in the application, we find it satisfactory as sufficient cause has been shown in the application. The same is accepted and IA is allowed.

IA No. 678 of 2018
(For Interim Directions)

We have heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent Nos. 2 & 3.

The Appellant herein, has sought the following reliefs, which read thus:

> *"The balance of convenience is in favour of the appellant/applicant. It is most humbly prayed that this Hon'ble Tribunal may be pleased to grant an interim direction, directing the 2nd Respondent to purchase power generated by the Appellant's windmills and to make payment at a tariff of Rs.4.50/- per unit, pending disposal of the appeal."*

The learned counsel for the Appellant submitted that, in the light of the Order dated 29.05.2018 passed in OP No. 28 of 2018 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru, the Appellant is agreeable to accept tariff @ Rs. 3.64 per unit subject to the outcome of the result of this Appeal. Therefore, he submitted that the second Respondent may be directed to purchase the power generated by the Appellant's wind mills and to make the payment towards arrears, if any, and, further, also to make the payment @ Rs. 3.64 per unit in future also until further orders.

Per-contra, the learned counsel appearing for the second Respondent submitted that, the second Respondent has no objection if the Appellant is ready

and willing to accept the tariff @ Rs. 3.64 per unit as per the Order dated 29.05.2018 passed in OP No. 28 of 2018 on the file of the Karnataka Electricity Regulatory Commission, Bengaluru.

Submissions made by the learned counsel appearing for the Appellant and the Respondent Nos. 2 & 3, as stated supra, are placed on record.

After careful consideration of the submissions of the learned counsel appearing for the Appellant and the Respondent Nos. 2 & 3, we hereby direct the second Respondent to purchase the power generated by the Appellant's wind mills and to make the payment @ Rs. 3.64 per unit towards arrears as on date, if any, and, further, direct to pay Rs. 3.64 per unit towards purchase of power generated by the Appellant's wind mills in future also until further orders expeditiously subject to the outcome of the result of this Appeal.

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Registry is directed to assign the number and post the matter for admission on ***13.07.2018***, as agreed by the learned counsel appearing for the Appellant and the Respondents.

(S. D. Dubey)
Technical Member

(Justice N. K. Patil)
Judicial Member

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