

COURT - I

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

**IA NO.275 OF 2017 IN
APPEAL NO.95 OF 2017**
&
**IA NO.305 OF 2017 IN
APPEAL NO. 105 OF 2017**

Dated: 25th April, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of :

**Green Energy Association ...Appellant(s)
Vs.
Central Electricity Regulatory Commission ...Respondent(s)**

**Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Ms. Mandakini Ghosh
Mr. Saransh Shaw
Ms. Ritika Singhal**

Counsel for the Respondent(s) : Mr. Nikhil Nayyar for CERC

**IA NO.305 OF 2017 IN
APPEAL NO. 105 OF 2017**

In the matter of :

**Indian Wind Power Association (NRC) ...Appellant(s)
Vs.
Central Electricity Regulatory Commission & Anr. ...Respondent(s)**

Counsel for the Appellant(s) : Mr. Vishal Gupta

Counsel for the Respondent(s) : Mr. Nikhil Nayyar for CERC

ORDER**APPEAL NO. 105 OF 2017**

Admit. Issue notice. Mr. Nikhil Nayyar takes notice on behalf of Respondent No.1. Notice be issued to the other Respondents returnable on 25.05.2017. Dasti, in addition, is permitted.

(IA Nos. 275 & 305 of 2017)
(Applications for Stay)

I.A. No. 275 of 2017 is filed in Appeal No. 95 of 2017 and I.A. No. 305 of 2017 is filed in Appeal No. 105 of 2017. In both these IAs, the prayer is for stay of the order dated 30/03/2017 passed by the Central Electricity Regulatory Commission ("**Central Commission**"). Hence, both these IAs can be disposed of by a common order. It is also prayed that in the alternate the trading of RECs at the price determined in the impugned order be stayed till the disposal of the present appeals.

We have heard learned counsel for the parties. Learned counsel have urged that the impugned order has impacted the RE generators under the REC mechanism as it has arbitrarily revised the REC's prices without providing any protection to the existing unsold REC inventory. The impugned order is thus in contravention of Regulations 7 and 9 of the CERC REC Regulations and the provisions of the Electricity Act, 2003. It is further urged that the Central Commission has failed to provide any cogent reasoning for its departure from the methodology used for determination of floor and forbearance price by taking the REC CERC Benchmark Tariff. It is submitted that if the impugned order is not stayed or if the trading of RECs is not suspended, irreparable loss will be caused to the RE generators.

Mr. Nikhil Nayyar, learned counsel for the Central Commission has strenuously opposed the grant of interim relief. Counsel submitted that the Central Commission has acted within the parameters of statutory regulations and no vested rights have accrued in favour of the Appellants *de-hors* the statutory regulations. Hence, the prayers made in the stay applications deserve to be rejected. Counsel submitted that floor and forbearance price reflect the market conditions and realities and, in the best interest of market development, the decision of floor and forbearance price has been taken in the impugned order and the same does not deserve to be stayed. It is submitted that the Appellant-Association does not represent all the RE generators and suspension of trading will affect right of freedom to trade of other RE generators without giving them the opportunity of being heard.

Having heard learned counsel for the parties, *prima facie*, we are of the opinion that the prayers for the stay of the impugned order or suspension of sale of all RECs till the disposal of the present appeal, cannot be granted. *Prima facie*, we appreciate the contention of Mr. Nayyar that the Appellants have no vested rights *de-hors* the statutory regulations. The Central Commission's order *prima facie* appears to be in line with the statutory regulations. Any order of stay or suspension of sale of all RECs would not be proper because it will not be in the general interest of the industry. Applications are disposed of. Needless to say that this order will abide by the final order that will be passed in these appeals.

APPEAL NOS.95 & 105 OF 2017

List these appeals for hearing on **25.05.2017 at 2.30 p.m.** In the meantime, pleadings be completed.

(I. J. Kapoor)
Technical Member
ts/kt

(Justice Ranjana P. Desai)
Chairperson