

**COURT-I**

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

**APPEAL NO. 252 OF 2016**

**Dated: 21<sup>st</sup> January, 2019**

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson  
Hon'ble Mr. S.D. Dubey, Technical Member**

**In the matter of:**

**M/s GEM Sugars Ltd. .... Appellant(s)  
Incorporated under Companies Act 1956  
Having its registered office at  
'Hoodi Apartment, III floor, 120,  
Cunningham Road,  
Bangalore – 560025  
Represented by its Managing Director**

**Vs.**

- 1. Karnataka Power Transmission  
Corporation Ltd.  
Incorporated under Companies Act 1956  
Having its registered office at  
Kaveri Bhawan,  
Bangalore – 560 001**
- 2. Hubli Electricity Supply Company Limited  
(wholly owned Government of Karnataka undertaking)  
A company incorporated under Companies Act 1956  
Having its registered office at  
P.B. Road, Navanagar,  
Hubli – 580 029  
Karnataka  
Represented by its Managing Director**
- 3. Karnataka Electricity Regulatory Commission  
6<sup>th</sup> and 7<sup>th</sup> Floor, Mahalaxmi Chambers,  
No. 9/2, M.G. Road  
Bangalore – 560 001  
Karnataka**

**... Respondents**

Counsel for the Appellant(s) : Mr. Shubhanshu Padhi  
Ms. Poonam Patil  
Mr. Pkavin  
Mr. G. Dhillion

Counsel for the Respondent(s) : Ms. Swapna Seshadri  
Mr. Anand K. Ganesan  
Ms. Neha Garg  
Ms. Parichita Showdhury for R-1 & R-2

## **ORDER**

The admitted facts, in brief, are as under:

It's not in dispute that the Appellant entered into a Power Purchase Agreement ("PPA") with the 1<sup>st</sup> Respondent, the Karnataka Power Transmission Corporation Limited ("KPTCL") on 30.03.2001. Later, the said PPA came to be assigned to the 2<sup>nd</sup> Respondent – Hubli Electricity Supply Company Limited ("HESCOM"). The tariff was freezed at Rs.3.32 per unit in the year 2003 and it continued to be the same when assignment was made.

O.P. No. 18 of 2008 came to be filed before the State Commission by the Appellant seeking a direction against the 1<sup>st</sup> Respondent to make payment of Rs.1,90,06,094/- with interest at 18% and for payment of Rs.15,68,01,662/- with interest at 18% by the 2<sup>nd</sup> Respondent, being interest on delayed payment of principal amount, payment of differential

amount and also payment of interest on delayed payment of differential amount.

On 24.01.2009, settlement came to be arrived at between the parties wherein the Respondents agreed to pay the amount due and also the interest on delayed payment at 6.5% instead of 18% as claimed by the Appellant.

On 16.04.2009, the State Commission disposed of the said petition based on the settlement between the parties. It's not in dispute that the same amounts came to be paid towards non-grant escalation amount and so also 6.5% interest on delayed payment by both the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents. These amounts came to be paid between 2009 and 2012 by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents.

On 25.09.2013, O.P. No. 25 of 2013 came to be filed by the Appellant asking the following reliefs:

- (i) *“Direct the Respondent No.1 to release a payment of Rs.19.82 lakh towards payment of interest at 6.5% per annum;*
- (ii) *Direct the Respondent No.2 to release a payment of Rs.84.53 lakh towards payment of interest at 6.5% per annum.”*

The said petition came to be disposed of on 26.02.2015 by the following order:

- “(i) The second Respondent (HESCOM) shall pay interest at the rate of 6.5% (six point five percent) per annum on the delayed payments made in respect of the regular Tariff Invoices, for the period from 10.06.2005 to 31.03.2010;*
- (iii) Accordingly, the Petitioner and the second Respondent (HESCOM) shall arrive at the actual amount due towards interest payable on delayed payments of the Tariff Invoices, as stated above, after reconciliation of the accounts.”*

Aggrieved by the same, a Review Petition came to be filed contending that there was wrong recording of settlement arrived at between the Appellant and the 1<sup>st</sup> Respondent and therefore the State Commission directed payment against the 2<sup>nd</sup> Respondent –HESCOM only, though the payment was also sought from the 1<sup>st</sup> Respondent –KPTCL. Meanwhile, HESCOM made payment of Rs.84,53,080/- in compliance of original order in O.P. No. 25 of 2013, which in *toto* came to be set aside and directed re-hearing of the said O.P. against both the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents. Hence, the present appeal.

On a perusal of averments and the orders, it seems that a mistake has crept in by recording the settlement between the Respondent No.1 and the Appellant. Virtually, the claim against the 1<sup>st</sup> Respondent came to be closed as settled on wrong perception of settlement. However, while allowing the Review Petition, the State Commission intended to rectify the

said mistake insofar as recording settlement against the 1<sup>st</sup> Respondent, made a mistake by setting aside the entire Order dated 26.02.2015 whereby the payment made by the 2<sup>nd</sup> Respondent was also ignored and re-hearing against the 2<sup>nd</sup> Respondent was also indicated though the matter is settled between Appellant and the 2<sup>nd</sup> Respondent.

Under these circumstances, the appeal is allowed and we pass the following order:

No claim remains so far as the 2<sup>nd</sup> Respondent is concerned. Therefore, there is no necessity to keep the proceedings in O.P. No. 25 of 2013 as against the 2<sup>nd</sup> Respondent.

Proceedings in O.P. No. 25 of 2013 shall continue as against the 1<sup>st</sup> Respondent-KPTCL alone. All contentions between the Appellant and the 1<sup>st</sup> Respondent are kept open.

The Appeal is disposed of. IAs, if any, shall stand disposed of. No order as to costs.

**(S. D. Dubey)**  
**Technical Member**

**(Justice Manjula Chellur)**  
**Chairperson**