

COURT - I

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

**IA NO. 381 OF 2017 IN
DFR NO. 1643 OF 2017**

Dated: 22nd May, 2017

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

In the matter of :

**Greenko Budhil Hydro Power Pvt. Ltd. ...Appellant(s)
Vs.
Central Electricity Regulatory Commission & Ors. ...Respondent(s)**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.
Mr. Hemant Singh
Mr. Matrugupta Mishra

Counsel for the Respondent(s) : Ms. Suparna Srivastava for R-2

ORDER

This appeal is filed by the Appellant pursuant to the Delhi High Court's Order dated 15.05.2017. By the said order, the Delhi High Court had permitted the Appellant to file an appeal in this Tribunal under Section 111 of the Electricity Act, 2003. The Delhi High Court had also granted conditional interim protection to the Appellant in the following terms:

"It is further clarified that in case the appeal is filed and the Appellate Tribunal for Electricity either refuses to entertain the appeal before 22.05.2017 or declines grant of interim protection, this order deferring the curtailment shall automatically cease even though that may happen prior to 22.05.2017."

We have heard learned counsel for the parties. When we indicated to Mr. Sen, learned senior counsel appearing for the Appellant that it is not possible for us to grant any interim protection, Mr. Sen submitted that in that event the appeal may be finally disposed of at this stage. Hence, with the consent of the parties we admit the appeal and take it up for final disposal. Registry is directed to number the appeal/applications.

The main contention of Mr. Sen, learned senior counsel for the Appellant is that the Central Commission had earlier granted stay on payment of transmission charges. That order expired on 03.11.2016. It is pointed out to us that Respondent No.2 by its letter dated 09.05.2017 threatened to debar the Appellant from availing short term open access unless the outstanding transmission charges are paid. It is submitted that the Appellant had requested the Central Commission to list the pending review petition at the earliest and restrain Respondent No.2 from taking any coercive action against the Appellant, pursuant to the letter dated 09.05.2017 pending disposal of the proceedings in the review petition. By the impugned order, the Central Commission rejected the prayer made by the Appellant. The Central Commission directed the Appellant to pay 50% of the outstanding LTA charges for the disputed period. The Central Commission further directed that if the matter is decided in favour of the Appellant, the amount paid shall be adjusted against the future transmission charges. Subject to the compliance of this direction,

Respondent No.2 was directed not to take coercive measures to realise the balance transmission charges till further orders.

Mr. Sen, learned senior counsel appearing for the Appellant made a serious grievance that the Central Commission did not list the review petition for final hearing on 03.11.2016. In such circumstances, the Central Commission ought to have granted the interim protection to the Appellant till the disposal of the review petition. Counsel submitted that this is therefore a fit case where this Tribunal should direct the Central Commission to dispose of the review petition in a time-line fixed by this Tribunal and in the meantime, direct Respondent No.2 not to take any coercive steps against the Appellant.

We are not inclined to accept this submission. The impugned order is an interim order. It only directs the Appellant to deposit 50% of the outstanding LTA charges. The Central Commission has also stated that if the Appellant succeeds the said amount shall be adjusted against the future transmission charges. So far as interim protection is concerned, we feel that it was in operation up to 03.11.2016. The Appellant ought to have approached the Central Commission for extension of the stay order, which the Appellant did not do.

In the circumstances, we are not inclined to interfere with the impugned interim order. However, having declined interim protection,

we are of the opinion that the Central Commission should hear the review petition on the next date fixed by it and dispose it of at the earliest. Order accordingly. The parties shall cooperate with the Central Commission. We make it clear that we have not expressed any opinion on the merits of the case. The appeal is disposed of in the afore-stated terms. Consequently, all the I.As also stand disposed of.

(I. J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

ts/kt