

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

**ORDER ON IA NO. 1123 OF 2018
IN APPEAL NO. 131 OF 2015
ON THE FILE OF THE APPELLATE TRIBUNAL FOR
ELECTRICITY - NEW DELHI**

Dated : 5th October, 2018

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

In the matter of:

Taxus Infrastructure & Power Projects Pvt. Ltd (Taxus)

308, SGL Plaza, Sec – 9,

DC Chowk, Rohini,

New Delhi - 110085

.... Appellant (s)

Versus

1. Gujarat Electricity Regulatory Commission (GERC)

6th Floor GIFT ONE Road 5C Zone 5,

GIFT CITY

Gandhinagar – 382 355 (Gujarat)

2. Gujarat Urja Vikas Nigam Ltd. (GUVNL)

Sardar Patel Vidyut Bhavan

Race Course

Vadodara – 390007 Gujarat

3. Gujarat Electricity Development Agency (GEDA)

4th Floor, Block No. 11 and 12 Udhyog Bhawan,

Sector 11 Gandhinagar – 382017 (Gujarat)

4. Gujarat Energy Transmission Corporation Ltd. (GETCO)

Sardar Patel Vidyut Bhawan
Race Tower Vadodara – 390007, Gujarat

5. Chief Electrical Inspector (CEI)

6th Floor, Block 18, Udhyog Bhawan,
Sector 11, Gandhinagar – 382 017, Gujarat

6. State Load Despatch Centre (SLDC)

Gotri Road, Near TB Hospital
Vadodara – 390021, Gujarat

..... Respondent(s)

Counsel for the Appellant(s) : Ms. Ritika Jhurani
Mr. Dinesh Sharma

Counsel for the Respondent(s) : Ms. Suparna Srivastava
Ms. Nehul Sharma for R-1

Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Mr. Pulkit Agarwal for R-2

Ms. Swapna Seshadri
Ms. Neha Garg for R-3

Taxus Infrastructure & Power Projects Pvt. Ltd., New Delhi, the Appellant herein, has filed the instant application, being IA No. 1123 of 2018, in Appeal No. 131 of 2015, seeking following reliefs:

- (i) Pass an order clarifying whether the state commission is entitled to issue consequential direction with respect to interest/ late payment charges.
- (ii) Pass any other or further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

ORDER

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

1. We have heard learned counsel, Ms. Ritika Jhurani, appearing for the Appellant.
2. The Appellant herein had raised an issue in its Appeal No. 131 of 2015 regarding the eligibility of the Appellant to receive Late Payment Charges (LPC) from Gujarat Urja Vikas Nigam Ltd (GUVNL) as per the provision of the Power Purchase Agreement on the bills raised by the Appellant for the energy supplied during 31.03.2013 to 08.08.2013 and thereafter from 08.08.2013.
3. GUVNL has admittedly not paid the late payment charges for the Billed Invoices raised by the Appellant as per Article No. 6.3 of the Power Purchase Agreement. Therefore, in accordance with the provisions of the power purchase Agreement, any delay in payment of the billed invoices by the power purchaser beyond seven days from receipt of the same, attracts the late payment charges payable to the power producer by the purchaser.
4. The instant issue had been raised before the State Commission as well as before this Tribunal in the instant appeal and the Appellant had made a specific prayer for payment of late payment charges. However, the same issue had not been considered by the State Commission or by this Tribunal. Hence, things thus

stood. Now, the matter has been remitted back to the State Commission. Therefore, the Appellant submitted that, the State Commission may kindly be directed to consider the same in the consequential order in the interest of justice and equity and presented this application.

5. Learned counsel for the Appellant, at the outset, submitted that, as per Power Purchase Agreement, if there is any delay in payment of the billed invoices by the power purchaser beyond seven days from receipt of the same, it attracts late payment charges payable to the power producer by the purchaser and this issue had been raised by the Appellant before the State Commission and also before this Tribunal in the said Appeal. The same had not been taken into consideration and when the matter was remitted back to the State Commission, the State Commission ought to have been directed to consider the same. In view of non-consideration of this aspect of the matter, they are constrained to redress their grievances before this Tribunal and thus have filed the instant application seeking the aforementioned reliefs.

6. After careful consideration of the submissions made by the learned counsel appearing for the Appellant and perusal of the statement made in the application and the prayer sought therein by the Appellant, it is manifest that this Appellate Tribunal vide its Judgment dated 04.07.2018 has dismissed the Appeal No. 131 of 2015 filed by the Appellant as devoid of merits and the issues raised in the Appeal, were answered against the Appellant. Therefore, we are of the considered view that

the instant application is not maintainable when the appeal filed by the Appellant is dismissed on merits. The question of considering the prayer sought in the application does not call for.

7. With these observations, the instant Application, being IA No. 1123 2018 in Appeal No. 131 of 2015, filed by the Appellant is dismissed as misconceived.

PRONOUNCED IN THE OPEN COURT ON THIS 5TH DAY OF OCTOBER, 2018

(S.D. Dubey)
Technical Member

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(Justice N.K. Patil)
Judicial Member