

COURT-I

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

**IA NO. 125 OF 2018 IN
APPEAL NO. 2 OF 2015**

Dated: 18th September, 2018

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

In the matter of :

Gujarat Urja Vikas Nigam Ltd.

...Appellant(s)

Vs.

Gujarat Electricity Regulatory Commission & Anr.

.... Respondent(s)

Essar Power Limited

**... Applicant
(Original Respondent No.2)**

Counsel for the Appellant(s)

:

Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran
Mr. Pulkit Agrwal

Counsel for the Respondent(s)

:

Ms. Suparna Srivastava
Ms. Nehul Sharma for R-1

Mr. Ramji Srinivasan, Sr. Adv.
Ms. Neha Nagpal
Mr. Naveen Hegde
Mr. Bummeet Singh Grover
For Applicant/ R-2

ORDER

PER HON'BLE MRS. JUSTICE MANJULA CHELLUR - CHAIRPERSON

The Applicant-Essar Power Limited (for short "**Essar Power**")
has filed this application seeking following reliefs:

“A. Pass an order directing the Appellant to deposit an amount of Rs.58 crores (Rupees Fifty Eight crores only) in terms of the order dated 29.01.2015 with the Respondent No.2 against a bank-guarantee(s) being issued to the Appellant on behalf of the Respondent No.2 for the like amount; and/or

B. Pass such other and further order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

Vide this Tribunal’s Order dated 29.01.2015, the Respondent-Gujarat Urja Vikas Nigam Limited (for short “**GUVNL**”) was directed to pay an amount of Rs.100 Crores to the Essar Power with certain conditions. For the purpose of clarity and brevity, the said Order dated 29.01.2015 is reproduced hereunder:

“We are, therefore, of the opinion that the Appellant should pay an amount of Rs.100 Crore to the 2nd Respondent within a period of 4 weeks from the date of receipt of the order. Needless to say this amount would be subject to the outcome of this appeal. Further, this payment is subject to the 2nd Respondent furnishing a bank guarantee of a nationalized bank for the sum of Rs.100 Crores in favour of the Appellant.”

Pursuant to the said Order dated 29.01.2015, GUVNL has paid Rs.100 Crores to Essar Power and Essar Power has furnished bank guarantees, which are detailed below:

S. No.	Name of Bank	Bank Guarantee No. and Date	Date of Issue of Bank Guarantee	Date of Expiry of Renewed Bank Guarantee	Amount of Bank Guarantee
1.	State Bank of India	0999515BG0001106 dated 19.06.2015	19.06.2015	18.12..2017	INR 7.5 crs
2.	Central Bank of India	0300715BG0000438 dated 27.06.2015	27.06.2015	26.12.2017	INR 24 crs
3.	Bank of India	01601FIBG150232 dated 02.07.2015	02.07.2015	01.01.2018	INR 34 crs
4.	State Bank of India (Yes Bank)	0999515BG0001430 dated 14.08.2015	14.08.2015	13.02.2018	INR 23 crs
5.	State Bank of Mysore	4000115BG0000064 dated 26.08.2015	26.08.2015	25.02.2018	INR 11.50 crs

It is not in dispute that these bank guarantees were renewed on earlier occasion. The subject matter of this application pertains to two bank guarantees, referred to above, at Serial No. 2 and 3, i.e., Rs.24 Crores pertaining to the Central Bank of India and Rs.34 Crores pertaining to the Bank of India. According to the Essar

Power, these two bank guarantees pertaining to the above two banks were to expire on 26.12.2017 and 01.01.2018 respectively. According to the Essar Power, the process of extending/renewing two bank guarantees was under due consideration, which was informed to GUVNL by Essar Power and so also by the Central Bank of India. It is stated by the Essar Power that on an earlier occasion, in spite of 60 days time, which was fixed for renewal of the bank guarantee, there was no encashment of bank guarantee and the bank guarantee was duly extended/renewed beyond the specified time of 60 days. This time, the due dates for second renewal of the bank guarantees by the Central Bank of India was 27.10.2017 and Bank of India was 02.11.2017. According to the Essar Power, they did inform the respective banks on 09.11.2017. The GUVNL sent an e-mail to the Essar Power on 30.11.2017 requesting to renew the bank guarantees and since the Essar Power failed to renew the bank guarantees, the GUVNL addressed letters on 04.12.2017 to the aforesaid two banks regarding invocation of bank guarantees.

It is the case of Essar Power that the Central Bank of India sent an e-mail to GUVNL on 04.12.2017 intimating GUVNL that the extension/renewal of bank guarantee is under process and Essar Power also sent an e-mail to the GUVNL requesting to withdraw its letters of invocation of bank guarantees. In other words, the Essar Power had taken initiation to renew/extend the bank guarantees. However, since there was procedural delay in renewing/extending the bank guarantees, which was beyond the control of the Essar Power, the GUVNL invoked the bank guarantees. Therefore, the Essar Power has come up with this application seeking the above reliefs.

As against this, GUVNL submitted that the main order, which is under challenge in the appeal, relates to Power Purchase Agreement dated 30.05.1996 for generation and sale of contracted capacity of 300 MW from 515 MW generating station of the Essar Power. The operative part of the Order dated 22.10.2014 passed by the State Commission deciding the entitlement of the Essar Power is under challenge. Since the impugned order directed the parties to the petition to evaluate the amount receivable by the

Essar Power from the GUVNL as per the principle decided by the State Commission in the impugned order, while considering the stay application to stay the impugned order dated 22.10.2014, the direction in question directing the GUVNL to pay Rs. 100 Crores to the Essar Power against bank guarantees of equal amount came to be passed. The bank guarantees were the security for the amount of Rs.100 Crores paid by the GUVNL, pending the appeal.

For Rs.100 Crores, multiple bank guarantees were furnished. Both the bank guarantees, in question, provided for renewal of the same 60 days before the expiry of the validity of the said bank guarantees, and in case of failure to renew the said bank guarantees, the GUVNL shall become entitled to invoke the said bank guarantees. So far as Bank of India and Central Bank of India's guarantees are concerned, as per the terms of said bank guarantees, the renewal had to be done on or before 02.11.2017 and 27.10.2017 respectively. Till 09.11.2017, there was not even initiation of process of renewal/extending bank guarantees by the Essar Power. On 30.11.2017, GUVNL requested the Essar Power to renew/extend the bank guarantees immediately on the same terms

and conditions, failing which, GUVNL stated in the said letter that it would be constrained to encash the bank guarantees. In spite of it, when the Essar Power failed to renew the bank guarantees till 04.12.2017, the GUVNL had no option but to invoke the bank guarantees.

During the course of arguments, learned counsel appearing for Essar Power contended that once the amount of Rs.58 Crores, which has come to the account of the GUVNL by way of invocation of bank guarantees is paid to the Essar Power, it would furnish fresh bank guarantees in terms of Order dated 29.01.2015 of this Tribunal. The GUVNL contends that since the main entity of the Essar Power is before NCLT and in case, the proceedings before the NCLT are held against main entity of the Essar Power, GUVNL would be in trouble to recover the money that would be paid to the Essar Power.

Admittedly, an amount of Rs.100 Crores was paid to the Essar Power subject to furnishing bank guarantees. As per the terms of bank guarantee, they had to be renewed 60 days prior to the expiry

of the said bank guarantees, that means, if the bank guarantee would expire in December, they would be renewed in October itself. The bank guarantee of Central Bank of India was to expire on 26.12.2017 and the bank guarantee of Bank of India was to expire on 01.01.2018. Thus, the validity of the bank guarantees was still in force on the date of encashment by the GUVNL i.e., on 07.12.2017. There seems to be some mis-communication so far as e-mail of bank is concerned. It appears that the bank's e-mail to the GUVNL was sent to a wrong e-mail on 04.12.2017 stating that extension of bank guarantee was under process. For this mistake, Essar Power cannot be blamed.

The entire amount of Rs.100 Crores in terms of original direction dated 29.01.2015 is against bank guarantees. On earlier occasion also, GUVNL did accept the extension of bank guarantee beyond the period of 60 days. Since GUVNL did ask for extension of bank guarantees on 30.11.2017 beyond the period of 60 days and since bank guarantees were very much valid till 26.12.2017 and 01.01.2018, respectively, we are of the opinion that the direction sought by Essar Power deserves to be allowed, which would meet

the ends of justice. Since *prima facie* case and balance of convenience is in favour of Essar Power, we pass the following order:

We direct GUVNL to deposit an amount of Rs.58 Crores in terms of Order dated 29.01.2015 with the Essar Power subject to bank guarantees being furnished to GUVNL for the like sum. The GUVNL shall pay Rs.58 Crores to the Essar Power within a period of two weeks from the date of receipt of this order. As indicated in the main Order dated 29.01.2015 since this amount is part of Rs.100 Crores, which has to be paid by GUVNL to the Essar Power, such payment would be subject to the Essar Power furnishing bank guarantee of a nationalized bank for Rs. 58 Crores and also subject to the outcome of the appeal.

The Application is disposed of.

List the main appeal for hearing on **01.10.2018.**

(S. D. Dubey)
Technical Member

(Justice Manjula Chellur)
Chairperson

REPORTABLE/NON-REPORTABLE