

**Before the Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**  
**Appeal No. 77 of 2011**

Dated : 14<sup>th</sup> October, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson.**  
**Hon'ble Mr. V.J. Talwar, Technical Member**

**In the matter of:**

M/s Reliance Infrastructure Limited  
H Block, 1<sup>st</sup> floor  
Dhirubhai Ambani Knowledge City  
Navi Mumbai.

....Appellant

Versus

1. Maharashtra Electricity Regulatory Commission.  
WORLD Trade Centre, 13<sup>th</sup> floor,  
Cuffe Parade, Colaba,  
Mumbai – 400005
2. Mumbai Grahak Panchayat,  
Sant Dnyaneshwar Marg,  
Vile Parle (W), Mumbai-400 056
3. Prayas,  
c/o Amrita Clinic,  
Athawale Corner, Karve Road,  
Pune – 411 004
4. Thane Belapur Industries,  
Post: Ghansoli, Navi Mumbai-400 071.
5. Vidarbha Industries Association,  
Civil Lines, Nagpur-400 041
6. Rakshpal Abrol,  
Bhartiya Udhami Avam Upbhokta Sangh,  
Madhu Compound, 2<sup>nd</sup> Floor,  
2<sup>nd</sup> Sonawala Cross Raod,  
Goregaon (East), Mumbai 400 063
7. N. Ponrathnam,  
25, Majithia Industrial Estate,

- Waman Tukaram Patil Marg,  
Deonar, Mumbai 400 088
8. Sandeep N. Ohri,  
A-74. Tirupati Tower, Thakur Complex,  
Kandivali (East), Mumbai 400 101
9. Adv. Mahesh Vaswani,  
Flat No. 1, Sunil Building  
Plot No. 83/C/17, Mira Baug Road,  
Santacruz (West), Mumbai 500 054
10. Sunil Deodhar,  
F-2, Flat No. 105, Kalpita Enclave,  
Sahar Road, Andheri (East)  
Mumbai 500 069
11. Advocate Mohit Jadhav,  
Chamber No. 5 & 5-A, 2<sup>nd</sup> Floor,  
14, Rajabhadur Mansion,  
Ambalal Doshi Marg, Fort,  
Mumbai 400 023
12. Tarak Oza,  
B-103, Shyam Kunj CHS  
Mahavir Nagar, Kandivali (West),  
Mumbai 400 067
13. Shrikant V. Soman,  
Mountain Springs, B-3-I-6,  
Dahivali CHS, Kandarpada,  
Dahisar (West), Mumbai 400 068
14. Ganesh Subramaniam  
Flat No. 5, Anish Apartment,  
Behind Birdy's, Near Shoppers Stop,,  
Azad Street, Andheri (West),  
Mumbai 400 058
- .....Respondents

Counsel for Appellant:

Mr. J.J. Bhatt, Sr Advocate

Mr. Akhil Sibal

Mr. Hasan Murtaza

Counsel for Respondents:

Mr. Buddy Ranganadhan for R-1

Mr. R P Abrol R-6

**Order regarding the Withdrawal of the Appeal**

**Per Hon'ble Shri V.J. Talwar, Technical Member:**

1. M/s Reliance Infrastructure Limited (RInfra), the Appellant is one of the Distribution Licensees in the state of Maharashtra. Its license for distribution of electricity in the suburban areas of Mumbai was expiring on 15<sup>th</sup> August 2011. On 4<sup>th</sup> March 2011 the Appellant filed a petition being No. 78 of 2010 before the Maharashtra Electricity Regulatory Commission (State Commission) for extension/renewal of its license. However, the State Commission by an Order dated 1<sup>st</sup> April 2011 dismissed the petition and directed the Appellant to follow the process for fresh license under Section 15 of the Electricity Act 2003 (the Act). Aggrieved by the said Order of the State Commission, the Appellant filed this Appeal.
2. The said Appeal was admitted and notice was issued to the Respondents. While the said Appeal was pending before this Tribunal, the State Commission, by an Order dated 11<sup>th</sup> August 2011, granted a fresh Distribution license (effective from 16<sup>th</sup> August 2011) to the Appellant under Section 14 of the Act.
3. Upon getting fresh license with effect from 16<sup>th</sup> August 2011, the Appellant, vide its letter dated 22<sup>nd</sup> August 2011, sought to withdraw the present Appeal as the same had become infructuous.
4. However, the 6<sup>th</sup> Respondent, Mr Abrol, one of the consumers' representatives objected to the request of the Appellant for withdrawal of the Appeal. Mr Abrol (R-6) submitted that the Appellant did not have any Distribution license at the time filling of the Appeal and this fact had been concealed while the Appeal was filed and so the Tribunal may dismiss the Appeal as not maintainable with heavy costs as the Appellant had no locus-standi to file the Appeal.
5. In support of his argument, Mr Abrol submitted the following:-

*“on 17<sup>th</sup> July 2009 the Appellant, M/s Rlnfra along with two other petitioners had filed a petition No 40 of 2009 before the State Commission for getting prior approval under Section 17(3) of the Act for assignment of its license to Reliance Energy Limited (REL). The State Commission accorded its approval to the said assignment of license to M/s Reliance Energy Ltd (REL) on 15<sup>th</sup> March 2010. Upon getting approval of the State Commission, the distribution license stood assigned in the name of M/s REL. Thereafter M/s Rlnfra, the Appellant herein was no more a licensee after the said assignment had taken place.”*

6. Mr Abrol mainly relied upon the provisions of Section 17 of the Act and the State Commission’s order dated 15<sup>th</sup> March 2010. Relevant portion of these are quoted below:

***“17. Licensee not to do certain things...***

*(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.*

*(4) Any agreement relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.”*

7. Relevant portion of the State Commission’s Order dated 15.3.2010 is reproduced below:

*“44. Accordingly in Regulation 2(b) of the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution Licence applicable to Reliance Energy Limited) Regulations, 2008, the term “REL” or “Distribution Licensee” would mean Reliance Energy Limited and the following words would be required to be deleted “(now known as Reliance Infrastructure Limited pursuant to Fresh Certificate of Incorporation Consequent upon Change of Name dated 28th April, 2008 issued by the Registrar of Companies, Maharashtra, Mumbai)”. The Commission will separately initiate the process of carrying out the above amendment.”*

8. According to Mr Abrol (R-6), the State Commission had accorded its approval for assignment of distribution license and had amended the Regulations for

specific conditions of license and therefore, the license stood assigned to M/s REL on 15.3.2010 and thereafter.

9. Per contra, the learned counsel for the Appellant clarified that though the State Commission had approved the proposal of the Appellant to assign the Distribution license to M/s REL, in reality the assignment had not been taken place. He further submitted that the issue of demerger was raised before the State Commission during the impugned proceedings of the Case No. 78 of 2010 and the State Commission had dealt with this issue and clarified the situation in the impugned order dated 1.4.2011. The relevant observation of the Commission is as follows:-

*“5. Having heard RInfra and the authorized consumer representatives and the issues raised in the hearings as well as in the materials placed before the Commission, the Commission is of the view that there are certain points which need to be cleared in the first instance. They are as follows:*

*a) **Res-Integra**- ...*

*b) **De-Merger** - As can be noticed from Clause 4.3.2 (last sentence) of the said Scheme of Arrangement (Demerger) of inter alia RInfra Mumbai Electricity Distribution Business into REL, that “The Board of Directors of RInfra and of the respective Resulting Company, shall mutually resolve as to whether and when each Section of the Scheme becomes effective”. {Underling added}. Clause 2.13.1(c) of the Scheme provides that “upon the Scheme becoming effective” licenses etc of RInfra required to carry on power distribution shall stand vested in / transferred to REL. Importantly, Clause 1.3 provides as follows –*

*“DATE OF TAKING EFFECT AND OPERATIVE DATE*

*Each Section of the Scheme, set out herein in its present form or with any modification(s) in accordance with Clause 4.2 of the Scheme shall be effective from the Appointed Date but operative from the respective Effective Date(s) for each section.”*

*RInfra has in its Petition confirmed the following –*

*“RInfra submits that pursuant to the order passed by this Hon“ble Commission in Case No.40 of 2009, the Scheme will be effective only on receipt of remaining requisite approvals which are awaited. RInfra further submits that upon receipt of requisite approvals, the Board of Directors of RInfra and REL will record receipt of such approvals and*

*pass the resolution for making the Scheme operative and effective. As on date, the distribution licence, rights and obligations thereunder and assets in distribution system continues to remain vested with RInfra. Consequently, this Petition has been filed by RInfra-Distribution Business (RInfra-D) as the petitioner.” [para A.1.2]*

*Taking into account RInfra’s statement made in the Petition that the Scheme of Demerger has not yet become effective / operative, and also in view of the various provisions of the Scheme of Arrangement (Demerger), it is clear that Section 2D (Demerger of Power Distribution Division of RInfra into REL) is conditioned upon this provision to be effective / operative which in turn is dependant upon the Board of Directors of RInfra and of REL (Resulting Company) to mutually resolve as to whether and when Section 2D of the Scheme becomes effective. Therefore, unless, certified true copies of Resolutions of the Board of Directors of RInfra and of REL (Resulting Company) is submitted to MERC stating as to from when Section 2D of the Scheme becomes effective, the demerger, transfer and vesting of Mumbai Licensed power distribution business into REL would not be operative. Until then, it would be RInfra that could file Petitions before MERC for its Mumbai Licensed power distribution business. Accordingly, issues as raised on the legal entity seeking extension / renewal / grant of licence as also issues raised verbally by the Ld. Counsel of RInfra have been addressed in the amended Petition filed on March 4, 2011.”*

10. The Ld. Counsel for the State Commission in fact confirmed that the State Commission had not amended the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution License applicable to Reliance Energy Limited) Regulations, 2008 and it remained in the name of the Appellant till its expiry on 15<sup>th</sup> August 2011.
11. We have heard the objections raised by the 6<sup>th</sup> Respondent for withdrawal and clarifications submitted by the Learned Senior Counsel for the parties and have given our anxious consideration to their respective submissions.
12. Having regard to the materials available on record and having considered the impugned order dated 1.4.2011 and the State Commission’s order dated 15.3.2010 in case no 40 of 2009, we are of the view that the grounds of objections urged by the 6<sup>th</sup> Respondent as against the withdrawal are without any merit. On the other hand we are of the considered view that the Appeal has become infructuous and so it would be proper to allow the Appellant to withdraw the Appeal. The reasons for our above view are as follows:-

- i) It is an admitted fact that the Appellant had sought the State Commission's approval for assigning its Distribution license to another company viz., M/s REL. The State Commission had accorded its approval for such an assignment by its order dated 15.3.2010. However, the assignment had not taken place in reality. In this connection we would like to reproduce para 43 of the State Commission's Order dated 15.3.2010 wherein the State Commission had directed the Appellant to transfer all its assets in the Distribution System to M/s REL. Relevant portion of Para 43 of the State Commission's order dated 15.3.2010 is quoted below:

"43. Therefore, the Commission approves the assignment of distribution license and transfer of assets in the Distribution System in favour of the 2<sup>nd</sup> petitioner company provided that the 2<sup>nd</sup> petitioner company retains the ownership and operational control over the assets in the Distribution System. ... The 1<sup>st</sup> petitioner shall ensure that the assets representing its licensed distribution business is transferred to the 2<sup>nd</sup> petitioner company in entirety and that no portion of it is retained by the 1<sup>st</sup> petitioner company nor transferred to any company other than the 2<sup>nd</sup> petitioner company. ..." {emphasis added}

- ii) Ld. Counsel for the Appellant confirmed that such transfer of assets had not taken place. The assignment of license from the Appellant to M/s REL cannot be said to have taken place without transfer of ownership and operational control of distribution assets to M/s REL.
- iii) The State Commission, while approving the proposal of the Appellant to assign the license to M/s REL, had specifically noted that the Regulation 2(b) of the Maharashtra Electricity Regulatory Commission (Specific conditions of Distribution License applicable to Reliance Energy Limited) Regulations, 2008 would required to be amended and had, therefore, recorded that *"The Commission will separately initiate the process of carrying out the above amendment."*

- iv)* However, these Regulations had not been amended by the State Commission till 15<sup>th</sup> August 2011. Therefore, the Appellant was a Distribution licensee at the time of filing this appeal.
13. Upon being granted a fresh Distribution license by the State Commission on 11<sup>th</sup> August 2011 (effective from 16<sup>th</sup> August 2011), the Appellant promptly had informed this Tribunal about new development and sought withdrawal of the Appeal on 22.8.2011. Hence, we do not find anything wrong over the request for the withdrawal of the Appeal as it has become infructuous.
14. We allow the Appellant to withdraw the Appeal. Consequently the Appeal is dismissed as withdrawn.
15. However, there is no order as to cost.

(V J TALWAR)  
Technical Member

(Justice M. Karpaga Vinayagam)  
Chairperson

Dated: 14<sup>th</sup> October, 2011

REPORTABLE/NON-REPORTABLE