

**COURT – I**

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No.185 of 2008 &  
IA No. 96 of 2009**

**Dated: 7<sup>th</sup> July, 2010**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

Maharashtra State Electricity Dis. Co. Ltd. ... Appellant (s)

Versus

Maharashtra Electricity Regulatory Commission ... Respondent(s)

Counsel for the Appellant (s) : Mr. Vikas Singh, Sr. Adv. With  
Mr. Abishek Mitra & Mr. Ravi Prakash

Counsel for the Respondent (s): Mr. Buddy A. Ranganadhan for R.1

**ORDER**

Though several grounds have been urged in the Appeal, Mr. Vikas Singh, the learned Senior Counsel appearing for the Appellant, ultimately confined himself to the prayer that the suitable directions could be given by this Tribunal to the State Commission to consider the issue with reference to the grant of mandatory surplus of 4.5% only, which has already been directed by the High Court in the Appeal filed before it.

We have heard the learned counsel for the Commission also.

With reference to the above prayer, the Appellant has filed an affidavit dated 03.08.2009, in which the relevant portion – Paras 5 & 6 are reproduced below:

***“5. The erstwhile MSEB approached the MERC asking the MERC to provide for the mandatory surplus @ 4 ½% of the total capital base being Rs.493.18 Crore and a deficit of Rs. 539.46 Crore for FY 2001-02. While the application filed by the erstwhile MSEB before the MERC was pending, the successor in interest i.e. MSEDCL filed a Tariff Petition for the year 2008-09 in which MSEDCL sought to recover the actual expenses incurred for FY 2001-02. In the said petition the MSEDCL sought to recover the actual expenses incurred during the year 2001-02 without excluding any amount on account of sharing of 50% of T & D losses over the target set by MERC but without also including therein the mandatory surplus which the MSEDCL is bound to get under Section 59 of the Electricity Supply Act 1948, which claim of the MSEDCL had been upheld by the Hon’ble High Court and in fact there was a specific direction to the MERC to grant the same to the Appellant.***

***6. The MERC in the impugned Order corrected the Tariff Petition of the Appellant to the extent of amount equivalent to 50% of the T & D losses over the target set by MERC to the Appellant, which denial has been affirmed by the High Court but the MERC failed to consider to grant to the Appellant the mandatory surplus of 4.5% as mentioned above earlier which was a specific direction by the High Court and which had been specifically claimed by the MSEB in their application to the MERC filed on 24<sup>TH</sup> March 2004, which application had to be considered at the time of fixation of Tariff for the year 2008-09.”***

In view of this limited prayer, we deem it appropriate to remit the matter to the State Commission directing it to consider the aspect with reference to the mandatory surplus of 4.5% in the next truing up exercise after hearing the parties and to pass an Order in accordance with law. Accordingly directed.

The Appeal is disposed of.

**(Justice P.S. Datta)**  
Judicial Member

**(Rakesh Nath)**  
Technical Member

**(Justice M. Karpaga Vinayagam)**  
Chairperson

ts/ksm