

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

**Interlocutory Application No. 155 of 2008
In
Appeal No. 60 of 2007**

Dated: February 25 , 2009.

Present: - Hon'ble Mrs. Justice Manju Goel, Judicial Member
Hon'ble Shri H.L. Bajaj, Technical Member

The Tata Power Company Limited
Bombay House, Homi Mody Street
Fort, Mumbai-400001

.....Appellant

versus

1. Maharashtra Electricity Regulatory Commission
Through its Secretary
World Trade Centre, Centre No. 1
13th floor, Cuffe Parade
Mumbai-400005
2. Mumbai Grahak Panchayat
Sant Dnyaneshwar Marg
Behind Coopoo Hospital Vile Parle
3. Prayas, C/o Amrita Clinic
Athawale Corner, Karve Road
Deccan Gymkhana
Pune-411004
4. Thane Belapur Industries
Plot No. P-14, MIDC
Rabale Village, Post Chansoli
Navi Mumbai 400071

5. Vidharbha Industries Association
Ist floor, Udyog Bhawan, Civil Lines
Nagpur-440001
 6. General Manager, BEST Undertaking
BEST Bhavan, BEST Marg
Mumbai-400001
 7. Sr. Vice President (Comm)
Reliance Energy Ltd.
Reliance Energy Centre
Santa Cruz (E)
Mumbai-400050
-Respondents

Counsel for Appellant(s): Mr. Amit Kapur, Advocate
Mr. Mansoor Ali Shoket,
Advocate
Ms Shobana Masters, Advocaes

Counsel for Respondent(s) Mr. Buddy A. Ranganadhan
for MERC

Judgment

Per Hon'ble Mr. H.L. Bajaj, Technical Member

The present application has been taken out on behalf of the Tata Power Company Limited (TPC in short) seeking clarification on our judgment dated May 12, 2008 in appeal No. 60 of 2007. TPC had inter-alia challenged the orders of the first respondent Maharashtra Electricity Regulatory Commission (MERC or the Commission in short) dated October 03, 2006 passed in case nos. 12 of 2005 and 56 of

2005 and the order dated March 22, 2007 passed in case No. 47 of 2006.

Appeal No. 60 of 2007 was allowed by this Tribunal vide our judgment dated May 12, 2008 and the matter was remanded to MERC with the direction that the ARR be revised in the light of our directions.

One of the issues which needs further clarification is regarding the issue of diminution in the value of investment while drawing from reserves. While allowing the TPC appeal in this view of the issue we had given reference of our earlier judgment in IA 76 of 2007 in appeal No. 251 of 2006 in which it was stated that :

“ It is good practice to set aside an amount of money to meet unexpected conditions and unforeseen losses in business. This amount so set aside is called Contingency Fund in accounting terminology. This supplements the Contingency Reserve which is defined as “an amount of money established from retained earnings to allow for unforeseen losses in business”.

It had been conceded by the rival parties that there has indeed been a diminution in the value of the investment made under the Unit Trust of India Scheme US- 64 (an approved security under the Indian Trust Act). When one is required to fall back on the contingency reserves in an emergent situation, it is the prevalent intrinsic true value of the “Units” which matters and not the cost at which the units were acquired. It is the real current cost of the ‘units’ which is of significance and actual use. In case the value of the ‘units’ exceeds the cost of acquisition. Obviously the increased amount alone will count for drawing upon the contingency reserves and not the lesser book value of the ‘units’. In this regard the applicant has filed an affidavit as below:

“(a) Over the years, towards the Contingencies Reserve created in terms of VIth Schedule to the Electricity (Supply) Act, 1948, the applicant had inter alia acquired 8,75,60,540 (eight crore seventy five lakh sixty thousand five hundred forty) units of the erstwhile US-64 scheme of the Unit Trust of India at a price of Rs. 126.94 crores.

(b) This investment was reflected in the Contingencies Reserve Investments at the acquisition price of Rs. 126.94 crores.

(c) As a consequence of the restructuring of the Unit Trust of India to resolve the UTI crisis, the said units were compulsorily converted (by the Unit Trust of India) effective June 01, 2003, into 87,56,054 bonds styled 6.75% Unit Trust of India-Tax Free US 64 Bonds 2008 of face value of Rs. 100 i.e. aggregate maturity value of Rs. 87.56 crores.

(d) The US 64 Bonds were due for redemption on June 30, 2008. They were redeemed for the maturity value of Rs. 87.56 crores. As a result there has been an actual diminution in the value of Rs. 39.38 crores (= Rs. 126.94 crores minus Rs. 87.56 crores). This shortfall in realized value of Rs. 39.38 crores was transferred to Contingencies Reserve Account of the applicant.

(e) This diminution in value and the resultant shortfall of Rs. 39.38 crores has not been accepted/allowed by the Ld. MERC.

I say that in the past whenever, as a consequence of redemption, a higher value has been realized by TPC against the investment, the gain on the redemption has been duly accounted for in the Contingencies Reserve.

I say that TPC reiterates and reaffirms the submissions made by it in the appeal as well as during the hearings. TPC seeks indulgence of this Tribunal to accept the contentions of TPC on the issue and clarify that the appeal is also allowed on this account as well as direct the MERC to take into account the directions of this Tribunal which may be passed in the present application.”

In view of the aforesaid discussions the application for clarification regarding the issue of diminution in the value investment while drawing from reserves is allowed. We direct the Commission to permit the adjustment of diminution in value of the statutory investment against the relevant reserves.

(H.L. Bajaj)
Technical Member

(Mrs.Justice Manju Goel)
Judicial Member