

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

**Appeal No.187 of 2009**

**Dated: 11<sup>th</sup> November, 2010**

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

M/s Rake Power Ltd. ... Appellant (s)

Versus

Maharashtra Electricity Regulatory Commission & Ors. ... Respondent (s)

Counsel for the Appellant (s): Mr. T.N. Rao

Counsel for the Respondent (s): Mr. Raunak Jain, Ms. Puja Priyadarshini  
for R-2

**ORDER**

Rake Power Limited (RPL), Nagpur is the Appellant. As against the order dated 25.5.2009 this appeal has been filed. By the order impugned the Maharashtra Electricity Regulatory Commission (MERC) dismissed the petition filed by the Appellant seeking damages suffered by the Appellant due to the default and breaches committed by Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), the 2<sup>nd</sup> Respondent.

The only question which arises in this Appeal is as to whether the State Commission having found that there was a commission of default on the part of Respondent No. 2, the Distribution Company, erred in construing such default by the Distribution Company, Respondent No. 2 in performance of its obligations under the Agreement, as not continuing.

We have heard the learned counsel for the parties. We have also perused the Appeal as well as the counter filed by Respondent No. 2.

It cannot be debated that there was a default on part of Respondent No. 2 in giving assistance by providing start-up power and making provision for synchronization. But on 9.7.2008, i.e. the date of application seeking for compensation/damages, the said default was not continuing in view of the fact that the start-up power was given on 21.4.2008 and synchronization was also made on 23.5.2008. The relevant clause in 16.4 would provide that he is entitled for compensation only when the default continues on the date of application.

In the present case, even though default was committed earlier as found by the State Commission by Respondent No.2 in as much as the provision for synchronization was made as early as on 23.05.2008, it cannot be held that the default was continuing on the date of application i.e. on 9.7.2008.

Therefore, we do not find any ground to hold that there is infirmity in the reasonings given by the State Commission in rejecting the application filed by the Appellant seeking for damages.

However, it is noticed that there is a finding with reference to past conduct of Respondent No.2 with regard to the default. Therefore, it is open to the Appellant to seek appropriate remedy before the appropriate Forum with regard to the default committed by the Distribution Company in the past, if so advised.

The learned counsel for the Appellant relies upon Clause 4.2(9) to substantiate his plea. The said provision deals with aspect of allowing the party to go for third party sale and as such this will not apply to the present facts of the case.

In this view of the above, we do not find any merit in the Appeal. However, as mentioned above, the liberty is given to the Appellant to approach the proper forum for the default committed earlier.

With these observations, the Appeal is disposed of.

**(Rakesh Nath)**  
**Technical Member**

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

ts/vs