

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**Execution Petition No. 2 of 2015 and IA Nos. 466, 482, 483 of 2015
& IA Nos. 78, 79 & 119 of 2016
in Appeal Nos. 76 of 2013 and 82 of 2013**

Dated: 18th May, 2016

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

In the matter of:

**Eastern India Powertech Limited,
(formerly known as DLF Power Ltd.) 12th Floor,
DLF, Galleria Building, DLF City, Phase-IV,
Gurgaon, Haryana-122 009**

...Execution Petitioner

Versus

- 1. Assam Power Distribution Company Ltd.,
Bijulee, Bhawan, Paltan Bazaar, Guwahati-781 001**
- 2. Assam State Electricity Board,
Bijulee Bhawan, Paltan Bazaar,
Guwahati-781 001**
- 3. Government of Assam
Represented by the Chief Secretary
Block B, Assam Secretariat, Dispur, Guwahati-781 001**
- 4. Assam Electricity Regulatory Commission,
ASEB Campus, Dwarandhar, G. S. Road, Sixth Mile,
Guwahati, Assam- 781 001**

...Respondent(s)

Counsel for the Appellant(s) : Mr. S. Ganesh, Sr. Adv.
Mr. Manu Seshadri Ms. Deepti Sarin,
Ms. Neha Gupta
Ms. Ruby Singh Ahuja
Ms. Apporva Rajnish

Counsel for the Respondent(s): Mr. Avijit Roy, Ms. Barnali Das
Mr. Deepika Gatowar for R-1 & R-2
Mr. Angshuman Sharma
Mr. Pragyan Sharma
Mr. Ravikant Pal for R-4
Ms. Prerna Priyadarshini for Intervenor

J U D G M E N T

PER Hon'ble T. Munikrishnaiah, Technical Member

1. The present Execution Petition being E.P. No. 2 of 2015 has been filed by Eastern India Powertech Limited (Formerly known as DLF Power Ltd.), seeking execution of the Judgement and Order dated 12.08.2014 under Section 120(3) of the Electricity Act, against the Respondents/Judgment Debtor for enforcement/execution of the judgment dated 12.08.2014, passed by this Tribunal in Appeal No. 76 and 82 of 2013, directing the Respondent/judgement debtor to pay an amount of Rs.165.6678 crores that is due and payable to the petitioner/decreed holders as on 31.01.2015.
2. Respondent No. 1, is Assam Power Distribution Company Ltd. (APDCL), Respondent No. 2, is Assam State Electricity Board and Respondent No. 3, is Government of Assam, represented by Chief Secretary and Respondent No. 4, is Assam Electricity Regulatory Commission (AERC).

3. The facts of the Execution Petition are as under:

- i) Eastern India Powertech Limited, herein after referred to as 'EIPL' entered into the Power Purchase Agreement (PPA) on 09.02.1995 with the Assam State Electricity Board. In terms of PPA, the petitioner set up two combined cycle power plants at Adamtilla for 9 MW and at Banskandi for 15.5 MW In the State of Assam. The Assam DISCOM set out the terms and conditions including the determination of tariff for sale under purchase of energy from gas base, Adamtilla and Banskandi power plants of the Appellant. The PPA contemplated a determination of tariff in terms of the Government notifications under subscription laws/tariff regulations notified from time to time.
- ii) On 24.05.2006, State Commission notified Tariff Regulations, 2006. Accordingly, the State Commission determined the final tariff for the said Power plants by its order dated 20.10.2011.
- iii) Against the Order dated 20.10.2011, determining final tariff for the year 2008-09, both the parties preferred Review Petitions before the State Commission. After hearing the parties, the State Commission passed an order dated 12.02.2013 to varying/modifying certain aspects of the final tariff order dated 20.10.2011. Accordingly, the order dated 12.02.2013 stood merged with the Tariff Order dated 20.10.2011.

- iv) The Appellant and Respondent filed Cross Appeals being Appeal Nos. 76 of 2013 and 82 of 2013 before this Tribunal.
- v) This Tribunal after hearing the parties passed the judgment on 12.08.2014, no appeal has been preferred against this Tribunal's judgment dated 12.08.2014 before the Hon'ble Supreme Court and as such, the said judgement has attained finality and become executable as a decree against the respondents/Judgment Debtors. The relevant part of the judgment under execution is quoted below:

“26. In view of above, we direct that in the interim period the Distribution Licensee will make payment for the electricity supplied by the Generating company from 2009-10 onwards at the tariff determined by the State Commission for FY 2008-09 in the main tariff order dated 20.10.2011 till the tariff for the FY 2009-10 onwards is decided by the State Commission. Full Fixed charges will also be paid for FY 2009-10 onwards as per the directions given in the tariff order dated 20.10.2011 for FY 2008-09 till the State Commission decides this issue while deciding the tariff for the FY 2009-10 onwards. These charges will be subjected to adjustment on final determination of tariff for FY 2009-10 onwards by the State Commission. If some amount is payable to Assam Discom after adjustment of final tariff, then EIPL will pay the same with interest at a rate as decided by the State Commission. Accordingly, decided”.

- vi) In view of the above directions, the Petitioner/decreed holder enclosed two invoices bearing Nos. :
- a) Invoice No. EIPL- ASEB- APTEL 120814-1 dated

04.09.2014, for the amount of arrears payable for the financial year 2008-09 along with interest @ 12.25% in terms of paragraph 102 of the order dated 12.08.2014. The total amount of arrears along with the interest payable for the financial year 2008-09 in terms of the order of APTEL/ERC amounts to Rs.1825.42 Lacs based on interest payable up to 31.07.2014.

b) Invoice No. EIPL – ASEB - APTEL 120814 - 2 dated 04.09.2014 for an amount of arrears payable for the financial years 2009-10 onwards upto July, 2014 along with interest @13.49% (average of SBI/PLR as a 1st April, of each of the applicable financial years), as per paragraph 26 of the order dated 12.08.2014. The amount of arrears payable along with interest amounts to Rs.1287.48 Lacs.

vii) Aggrieved by the non-payment of the claims made by the Appellant/Petitioner, Appellant filed this Execution Petition before this Tribunal and sought for following reliefs:

“a) Execute the judgment and order dated 12.08.2014 by attaching the case and bank balance(s) disclosed by the respondent No.1 in its Annual report for FY 2012-13 annexed hereto as Annexure G hereto towards satisfaction of the decretal dues of Rs.16566.78 Lacs;

- b) *Execute the judgment and order dated 12.08.2014 by attaching and selling the tangible fixed assets mentioned in the Annual report for FY 2012-13 annexed hereto as Annexure G towards satisfaction of the decretal dues of Rs.16566.78 lacs; and/or*
- c) *Execute the judgment and order dated 12.08.2014 against the Guarantor of Respondent No.1, namely, Government of Assam, by directing it to pay the decretal sum of Rs.16566.78 Lacs to the Petitioner/Decree Holder;*
- d) *Pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case”.*

4. We have heard arguments of the Learned Counsel for the Decree Holder, Mr. Manu Sheshadri and learned counsel for the Respondent, Mr. Avijit Roy and gone through the judgement under execution.
5. According to the decree holder/execution petitioner, the outstanding amount on the date of filing the Execution Petition is Rs.166 crores. On the contrary, according to the judgment debtor/discoms and the Government of Assam, there is huge difference between the amount calculated by the execution petitioner. Hence, we directed both the parties to calculate the outstanding amount right from the beginning year of the dispute i.e. FY 2008-09 and also directed each party to

clearly calculate the principal amount which remained outstanding in Financial year 2008-09 and thereafter calculation of interest .

6. As per our directions on 15.10.2015, both the parties presented submissions before this Tribunal, we found that there is a huge difference in the figures as argued by the rival parties and hence, Execution Petitioner was directed to file an affidavit.
7. As an interim measures on 18.11.2015, we directed the respondent No. 1 & 2 to deposit an amount of Rs. 9 cores within 10 days failing which, we shall be constrained to proceed further as per the provisions of order XXI CPC.
8. Accordingly, on 21.12.2015, Mr. M.K.Adhikari, General Manager, APDCL, Mr. Avijit Roy, Learned counsel for APDCL, presented a cheque bearing no. 496155, dated 16.12.2015 for Rs.9 crores, drawn on State Bank of India, New Guwahati in favour of the Registrar, APTEL. As there was no official bank account in the name of Registrar, APTEL, the aforesaid cheque was returned to Mr. M.K.Adhikari, General Manager, APDCL with the direction to issue a fresh cheque of the same amount in favour of the Execution Petitioner, M/s Eastern India Powertech India within 10 days.
9. On 18.03.2016, amount of Rs.9 cores has been paid by the Judgment Debtor to the Decree Holder. Further, we directed the Judgment Debtor as well as Decree holder to sit together to settle and arrive at the decretal amount and appraise us about the development or progress

thereof. Further, we directed, Managing Director of the Distribution Licensing company to constitute a committee.

10. As per the directions of this Tribunal in Order dated 18.03.2016 in the E.P.No.2 of 2015, the Managing Director of APDCL constituted one committee vide order No. APDCL/GM-TRC/EIPL/2014/Pt-1/945 dated 22.03.2016 & nominated the Chairman & members of the committee with a copy to the Execution Petitioner EIPL. MD, APDCL vide letter No. APDCL/GM-TRC/EIPL/2014/Pt.1/43 dated 28.03.2016 to EIPL requested to nominate their members for the Committee. EIPL vide letter No. Nil dated 31.03.2016 refused to nominate their members & informed to the MD, APDCL that APTEL order did not direct to form a joint committee. However, in order to comply with the spirit of the order, they suggested that both the parties should sit together at a neutral venue mutually convenient to both the parties to ascertain the decretal amount. EIPL suggested the neutral venue as either Kolkata or Delhi.
11. Accordingly, the meeting was arranged by APDCL scheduled at Assam Bhawan, New Delhi on 19th & 20th April, 2016. On 19.04.2016, the meeting was held at 1630 Hours, where both the parties were present and discussions started for arriving at mutually agreed decretal amount.
12. On 19.04.2016, both the party's representatives of Assam Power Distribution Company Ltd. (APDCL) and Eastern India Power Ltd. (EIPL) had discussed regarding financial consensus between both the parties

but they became unable to come to a conclusion and the meeting was postponed to 20.04.2016. The Counsel of the APDCL submitted that the EIPL representatives, did not turn up on 20.04.2016, making them waited throughout the day. The e-mail was received at 1656 hours on 20.04.2016 from EIPL to Managing Director, APDCL, stating that they are not willing to attend the meeting on apprehension that the meeting would not solve the dispute to arrive at an amicable solution. Further, EIPL alleged that APDCL brought several extraneous issues and new issues to end scope of meeting.

13. The APDCL claimed that the energy duration for the entire period of 2008-09 should be as follows:

“Hence under regulations 46.1(b), payable energy charges is energy charges (Rs.)=(Rate of energy charges in Rs./KWH)x energy delivered (ex-bus) for the month in KWH. The energy delivered for the entire period of 2008-09 should be as follows:

For Adamtila - 25.03 MU (ex-bus) x 0.82=Rs.2.05 crore

For Banskandi - 68.46 MU (ex-bus) x 0.69=Rs.4.70 crore

Total : Rs.6.75 crore

EIPL did not agree to these figures as indicated by APDCL without providing any valid reason. EIPL stick to their calculations without any valid reason.

14. There is a dispute for the payment due for the period beyond 2008-09 to 2013-14.

ORDER

15. In view of the above, we direct Assam Electricity Regulatory Commission to issue a notice to the rival parties to furnish the details of power injected from the date of commissioning to shutting down of the generating units into the grid of Assam Distribution Company, compute the actual amount due to EIPL after adjusting the payments made by APDCL and intimate the same for execution of the Petition No. 2 of 2015, to this Tribunal with in two months from today positively.

Post the Execution Petition for further orders on **20th July, 2016.**

Pronounced in the Open Court on this **18th day of May, 2016.**

**(T Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**

Dated: 18th May, 2016



REPORTABLE / ~~NON-REPORTABLE~~