

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)  
Court-II  
IA No.315 of 2012 and IA No.316 of 2012**

**In Appeal No. 166 of 2011,**

**Dated: 11<sup>th</sup> October, 2012**

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

**In the matter of:**

**Biomass Energy Developers  
Association & Ors.**

**... Appellant (s)**

**Versus**

**Andhra Pradesh Electricity  
Regulatory Commission &Ors.**

**... Respondent (s)**

**Counsel for the Appellant(s) : Mr. K. Gopal Choudhary,  
For Appellant(s)  
Mr. Rana Sudershan Biswas  
For IA No.315 and 316 of 2012**

**Counsel for the Respondent(s) : Mr. A. Subba Rao  
for R-2 to R6**

**ORDER**

This disposes of the two applications being IA No.315 of 2012 and IA No. 316 of 2012. We have concluded final hearing in connection with Appeal Nos. 166 of 2011, 150 of 2011, 168 of 2011, 172 of 2011, 173 of 2011 and 09 of 2012 analogously after prolonged hearing for over a couple of months. At the end of the day when we are reserving our order, the aforesaid two IA applications have been moved before us by Pridhvi Asset Reconstruction and Securitization Company Ltd. (herein after to be referred to as PARAS). One application contains the prayer for impleadment of the said entity as a party to this appeal, while another application contains a prayer for an order and direction upon the

distribution company, namely Eastern Power Distribution Company of Andhra Pradesh to pay directly to the applicant, all monies and receivables due to Vensa Biotek Ltd. These two applications have been filed in connection with Appeal no. 166 of 2011 in which Biomass Energy Developers Association and Others are the appellants and four distribution companies of Andhra Pradesh including Eastern Power Distribution Company, one Transmission Corporation of Andhra Pradesh, State of Andhra Pradesh and Andhra Pradesh Electricity Regulatory Commission are the respondents.

2. All the appeals which we have heard including the Appeal no.166 of 2011 in connection with which the aforesaid two interlocutory applications have been moved today are directed against an order dated 12.9.2011 passed by the Andhra Pradesh Electricity Regulatory Commission. Some 26 Biomass generating companies are members of the Biomass Energy Developers Association. Originally, the Commission had passed an order on 20<sup>th</sup> March, 2004 in connection with determination of tariff in respect of the companies generating electricity through renewable sources of energy. At that point of time, this Tribunal had not yet been constituted as a result of which an appeal was filed by the appellant no.1 of the Appeal no.166 of 2011 before the Andhra Pradesh High Court. The matter was remanded back to the Commission. The Commission passed orders. Again, High Court was moved. Meanwhile, this Tribunal came into existence. The Tribunal passed appellate orders and against the Tribunal's order dated 2.6.2006 two appeals were preferred before the Hon'ble Supreme Court. Meanwhile, the Commission initiated suo-motu proceedings for revision of tariff and passed an order. Then, the Hon'ble Supreme Court

disposed of the appeals setting aside the order dated 2.6.2006 passed by this Tribunal and remanded the matter back to the Commission for determination of tariff afresh. Then, came the Commission's order dated 12.9.2011 which is now under challenge before us. In this backdrop, the interlocutory applications of the proposed intervener have to be appreciated.

3. The sole concern before us in these appeals is whether by the order appealed against, the Commission has justifiably determined tariff in respect of the generation companies generating electricity through various renewable sources of energy. Now, the PARAS contends in one application that the assets of Vensa Biotek Ltd. which is a borrower company have been taken over by the PARAS because of their failure to pay off their dues which ran into crores of rupees and the assets so taken over do not match the dues payable by that company. Hence, impleadment of the PARAS is necessary in connection with Appeal No.166 of 2011. By the second application the PARAS makes a prayer that the Eastern Power Distribution Company of Andhra Pradesh which as a distribution company purchases power from Vensa Biotek Ltd. which is a member of the Biomass Energy Developers Association should be directed to pay direct to the PARAS, the monies payable by them to the said generation company. It is submitted by the learned advocate who moves the applications that in the earlier proceedings which culminated in the Hon'ble Supreme Court's Order, the Vensa Biotek Ltd. was a party, as such the PARAS, it being a creditor, should be made a party here. It is further submitted that if upon impleadment of party, a direction is not given by this Tribunal upon the said distribution company to meet up all arrears payable by the generator to the PARAS then the dues against the said generation company shall remain unpaid

for. The learned advocate for the appellant in Appeal no.166 of 2011 and the learned advocate appearing for the distribution companies oppose these applications and their arguments will surface as we proceed to the reasons in support of our order we are proposing.

4. Upon hearing all the parties, we are of the opinion that the present two applications are not maintainable before us for the following reasons:-

a) The principles under Order 1 Rule 10 (2) CPC are not applicable on the facts of the present case. As indicated earlier, in this appeal we are only considering whether the Commission was justified in determining the tariff in respect of the companies generating electricity through renewable resources of energy. We are not considering any question as to whether any amount or what amount is payable by the distribution companies to the generating companies. All interlocutory applications between the generators and the distributors have been disposed of.

b) In the aforesaid circumstance, it cannot be said that the PARAS is either a proper party or a necessary party. The PARAS is coming to this Tribunal with a different cause of action. In these appeals we are not at all considering as to what amounts are due or payable by the generation companies in favour of the creditors. It may be that like Vensa Biotek Ltd., there are other generation companies who are liable to pay to their creditors. Simply because of the fact that the assets of the Vensa Biotek Ltd. have been taken over by the PARAS this Tribunal cannot give any direction to the distribution company to pay their dues payable to the generation company direct to the PARAS. This is not our domain

to ascertain and determine the amount of dues payable by the said generating company to the PARAS.

c) What virtually the PARAS wants is execution of their decree / dues payable by the defaulting borrower to them through the instrumentality of this Tribunal in connection with a proceeding under Section 111 of the Electricity Act, 2003 which is purely impermissible.

d) The claim of the PARAS cannot be satisfied through an Order under Section 111 of the Electricity Act, 2003. The said section has delineated the scope and ambit of this Tribunal while adjudicating upon in a proceeding that arises out of an appealable order passed by the State / Central Commission.

e) Importantly, the PARAS was not a party before the Commission. It did not make any application before the Commission for being added as a party. In fact, the PARAS could have hardly any say with regard to determination of tariff in respect of renewable sources of energy.

f) The impugned order of the Commission does not make any reflection as to payment of any of the borrowers due in favour of the creditors.

g) The Order of the Hon'ble Supreme Court remanding the matter back to the Commission does not contain anything about the money allegedly payable to the PARAS by the aforesaid generating company. There was no direction of the Hon'ble Supreme Court with regard to the alleged claim of the PARAS.

h) What is most important is that the Vensa Biotek Ltd. is not a party before this Tribunal. The Biomass Energy Developers Association has 26 members all of whom are parties before us as appellants including

their Association in appeal no.166 of 2011 but the name of Vensa Biotek Ltd. does not find any berth in the list of the appellants.

i) In the circumstances, no direction is possible, if at all any impleadment of the PARAS is allowed, in the absence of the Vensa Biotek Ltd. concerning payment direct by the distribution company to the PARAS.

j) The Vensa Biotek Ltd. has not come up before this Tribunal in any appeal challenging the order of the Commission whereby tariff was determined in respect of the generating companies promoting renewable resources of energy.

k) A completely different cause of action cannot be allowed to be ventilated in this appeal. The PARAS is at liberty to pursue any legal course available to it.

5. Upon all these considerations the two applications are rejected.

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

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

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