

**BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
**Appellate Jurisdiction, New Delhi**

**Review Petition No. 4 of 2009 & IA No. 170 of 2009**  
**in Appeal No. 83 of 2008**

Dated: 27.04.2009

**Coram: Hon'ble Mrs. Justice Manju Goel, Judicial Member**  
**Hon'ble Mr. H. L. Bajaj, Technical Member**

**IN THE MATTER OF:**

Nahar Sugar And Allied Industries Ltd.  
Now known as Nahar Industrial Enterprises Ltd. (Sugar Unit)  
Amloh, Distt. Fatehgarh Sahib (Pb).  
Having its Regd./Office Focal Point Ludhiana  
Through Shr H. N. Singhal,  
President (Corp HR & Admn.) ... Petitioner

Versus

1. Punjab State Electricity Regulatory Commission  
SCO No. 220-221, Sector 34-A,  
Chandigarh
2. State of Punjab  
through Secretary (Power),  
Punjab Mini Secretariat, Sector-9,  
Chandigarh
3. Punjab State Electricity Board  
Through its Chairman,  
The Mall,  
Patiala

4. The Assistant Executive Engineer  
Sub Division Office,  
Punjab State Electricity Board

Distribution Division,  
Amlah, Distt. Fatehgarh Sahib  
Punjab

... Contesting Respondents

Counsel for the petitioner : Mr. Neeraj Kumar Jain,  
Advocate along with  
Mr. H. N. Singhal, President,  
Mr. Ram Parkash, Legal  
Manager of Petitioner

Counsel for the respondents : No appearance

### **ORDER**

**Ms. Justice Manju Goel, Judicial Member**

Heard.

2) The Review Petition is directed against the judgment of this Tribunal dated 06.03.2009 whereby we dismissed the appeal No. 83 of 2008 filed by the present review petitioner.

3) The appeal was directed against the order dated 01.04.08 in petition No. 8 of 2003 passed by Punjab State Electricity Regulatory Commission (the Commission for short). The brief facts relevant for disposal of the present review petition are as under:

4) The Punjab State Electricity Board (PSEB for short) vide commercial circular No. 26 of 2002 dated 10<sup>th</sup> June, 2002 introduced the provision of payment of Advance Consumption Deposit (ACD) for loads connected to thermal generation sets. Accordingly, PSEB required the appellant, engaged in manufacturing of sugar and generation of electricity by using the waste known as 'baggase' and had also installed an additional Turbine Generator (TG) set, to pay the ACD. This Tribunal vide a judgment dated 26.07.07 in appeal No. 7 of 2007 directed Commission to determine whether or not the appellant was using PSEB supply for its sugar plant. The Commission after re-hearing the parties and examining the facts observed that keeping in view the limited transformer capacity of the consumer i.e. the appellant, and the capacity of metering equipment, the load of the sugar mill and other industry of the petitioner (the appellant) normally fed by the TG sets, could not be fed from the PSEB supply. The Commission held that the permission to set up TG sets was granted subject to commercial circular No. 26 of 2002 and that despite the above finding the appellant was still liable to deposit the ACD and that the same was payable until they are revised. The Commission noticed that the subsequent commercial circular No. 51 of 2006 in respect of discontinuance of ACD was not retrospective and therefore, could not be used for re-fund of the ACD already paid. Vide our judgment under review, we held that the ACD was payable

as part of the sales regulations and therefore despite the inspection report about the appellant's use/non-use of PSEB supply ACD was payable.

5) The review petition raises four grounds:

- a) This Tribunal did not examine whether in view of the express provision of section 9 of the Electricity Act 2003 the Commercial Circular imposing ACD was inoperative after coming into force of the Electricity Act, 2003.
- b) This Tribunal did not consider the effect of the Circular No. 51 of 2006 whereby the ACD was discontinued,
- c) The finding of this Tribunal to the effect that there was inter flow of power between the captive plant and PSEB supply is incorrect and
- d) The Tribunal has failed to construe the provisions of the Circular No. 26 of 2002

6) Having heard the counsel for the appellant, we are of the view that no error apparent has been made out which warrants a review. All the grounds raised are in the nature of grounds for appeal.

7) Nonetheless it can be mentioned that the learned counsel for the appellant could not point out anything which makes the commercial circular No. 26 of 2002 inconsistent with section 9 of the Electricity Act 2003. So far as the commercial circular No. 51 of 2006 is concerned, the Commission itself found that it was not retrospective in operation and there being nothing to show the same as being retrospective it was not necessary for this Tribunal to deal with that circular. The other two grounds only challenge the finding of this Tribunal which cannot be done in review. Accordingly, the review petition is ***dismissed in limine***.

8) Interlocutory Application No. 170 of 2009 is also disposed of.

**( H. L. Bajaj )**  
**Technical Member**

**( Justice Manju Goel )**  
**Judicial Member**