

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

**Review Petition No. 7 of 2011 in
Appeal No. 197 of 2010**

Dated: 20th January, 2012

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

In the matter of:

Solapur Bioenergy Systems Pvt. Ltd.
501, Lakhani Centrium, Plot no. 27,
Sector – 15, CBD Belapur ,
Navi Mumbai 400 614.

.... Appellant/
Review Petitioner

Versus

1. Maharashtra Electricity Regulatory Commission,
World Trade Centre,
Centre No. 1, 13th Floor,
Cuffe Parade, Mumbai- 400 005.
2. Maharashtra State Electricity Distribution Company Ltd.,
Plot No G-9, Prakashgad,
Prof Anant Kanekar Marg, Bandra (E)
Mumbai 400051.
3. Tata Power Company Limited (Distribution),
Corporate Centre,
B 34, Sant Tukaram Road,
Carnac Bunder,
Mumbai 400 009.
4. Reliance Infrastructure Limited (Distribution),
Reliance Energy Centre,
Santacruz (East), Mumbai 400 055.

5. The B.E.S & T Undertaking,
BEST Bhavan, BEST Marg,
FORT, Mumbai 400 001

6. Municipal Commissioner,
Solapur Municipal Corporation,
Park Chowk, Solapur 413001

... Respondents

Counsel for the Appellant(s): Mr. M.G. Ramachandran
Ms. Ranjitha Ramachandran

Counsel for the Respondent(s): Mr. Buddy A Ranganadhan for R-1
Mr. Abhishek Mitra for R-2

ORDER

Hon'ble Shri Rakesh Nath, Technical Member:

This Review Petition has been filed by Solapur Bio-energy Systems Private Limited against the judgment dated 16.09.2011 passed by this Tribunal in appeal no. 197 of 2010. By this judgment, the Tribunal had partly allowed appeal no. 197 of 2010 accepting the contentions of the appellant/review petitioner with regard to the inclusion of costs of Pre-treatment Plant in the capital cost of the Municipal

Solid Waste Power Project (“MSW Project”), developed by the appellant/review petitioner.

2. The Review Petition has been filed in respect of the following aspects:

(a) To clarify on the Project Report and other materials placed by the Appellant in support of the capital cost of the Pre-Treatment, which material were available on record before the State Commission but was not considered by the State Commission in view of the outright rejection of the Pre-Treatment cost on the ground that it was the responsibility of the Solapur Municipal Corporation;

(b) On the decision of this Hon’ble Tribunal on the aspect of debt equity ratio and interest on borrowings, in the background of the letter dated 24.06.2009 of the Bank of Baroda”.

3. The learned counsel for the appellant/review petitioner has submitted that the appellant had

annexed a detailed Project Report with its Tariff Petition in response to the query in the Technical Validation Session. The appellant had also provided a detailed break up of the capital cost of the MSW Project alongwith the rationale for including cost of pre-treatment plant. They had also provided a copy of certificate issued by the Chartered Accountants with regard to the expenditure on the MSW Project. Thus, the appellant/review petitioner had provided all relevant information and supporting data sought by the State Commission and the State Commission while passing the impugned order had relied upon the data provided by them.

4. Learned counsel for the appellant/review petitioner further submitted that the appellant/review petitioner had filed a sanction letter given by the Bank of Baroda which specified the amount of sanctioned

loan and the interest rate applicable. This sanction letter of the Bank of Baroda has not been considered by the Tribunal. The above letter establishes that the loan sanctioned is only to the extent of 55% of the project cost and the interest rate applicable is 14.75%. The above letter justifies the claim of the appellant/review petitioner that the lenders/financial institutions were unwilling to provide 70% debt to the MSW Project and further the loan was not available at a rate lesser than 14.75%, despite the attempts made by the appellant/review petitioner.

5. In view of above, the learned counsel for the appellant/review petitioner submitted that there were errors apparent on the face of record.

6. We have also heard the learned counsel for the State Commission, who argued that the review petition

was not maintainable as there were no errors apparent on the face of record in the impugned judgment.

7. In paragraph 7.23 of the judgment, the Tribunal had made observations that the appellant had also not given adequate data to establish that the capital cost claimed by the appellant was reasonable. This remark is connected with the observations of the Tribunal in preceding paragraphs 7.21 and 7.22. In the preceding paragraphs, the Tribunal had observed that the State Commission in paragraph 3.4.14 of the impugned order had recorded that in the absence of any similar reference project cost available in India it would not be possible to compare and comment whether the proposed capital cost stated by the appellant was appropriate. The Tribunal had also directed the State Commission to determine the capital cost of the MSW project based on its own Regulation or Central

Commission's Regulations or on the basis of cost of similar projects commissioned in the country and in the absence of adequate number of projects in the country project data of other countries, by prudence check of the expenditure incurred by the appellant, inputs from study conducted by Ministry of New & Renewable Energy or other Government agencies, cost data available from the manufacturers/suppliers. The remarks made by the Tribunal in paragraph 7.23 of the judgment were relating to submission of supporting data relating to capital cost of similar projects to establish that the capital cost claimed by the appellant was reasonable and not relating to the break up of cost incurred by the appellant/review petitioner at its own project.

8. As regards the debt equity ratio and the rate of interest a detailed explanation has been given in

paragraph-9 of the impugned judgment. The Tribunal has recorded in paragraph 9.4 that the appellant had claimed interest rate at 14.75% as per actuals. The Tribunal has not questioned the actual rate of interest and quantum of actual debt to the tune of 55% of the capital cost as submitted by the appellant/review petitioner.

9. Regarding the debt equity ratio, the Tribunal has given a clear finding in paragraph 9.3 for restricting the equity to 30% and treating the equity in excess of 30% as normative loan in accordance with the Tariff Regulations 13.2.

10. Regarding interest rate, the Tribunal has referred to the Tariff Regulations 14.2 and concluded that the interest rate has been allowed as per the Regulations. Even though the appellant had submitted a letter from

Bank of Baroda about the actual quantum of loan and interest rate, it was not adequate to establish that the loan was not available for MSW power projects at more attractive terms from other banks.

11. Thus, we do not find any error apparent on the face of the record and, therefore, reject the contention of the appellant/review petitioner in this regard.

12. The Review Petition is dismissed with the clarification as given above with respect to the data for capital cost. No order as to cost.

13. Pronounced in the open court on this **20th day of January, 2012.**

(Justice P.S. Datta)
Judicial Member

(Rakesh Nath)
Technical Member

REPORTABLE / NON-REPORTABLE
vs