



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

E.P.No. 1 of 2017

in

Appeal No. 228 of 2012  
(Before the Hon'ble Appellate Tribunal for Electricity)  
Dated: 03-11-2017

Present

Sri Justice G. Bhavani Prasad, Chairman  
Dr. P. Raghu, Member  
Sri P. Rama Mohan, Member

**Between:**

M/s. SNJ Sugars and Products Limited ... Petitioner

**A N D**

The Chairman & Managing Director  
APTRANSCO & 3 others ... Respondents

This Execution Petition has come up for hearing finally on 13-10-2017 in the presence of Sri M.S. Prasad, Senior Counsel representing Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of both the counsel, the Commission passed the following:

**ORDER**

Proceedings arising out of the order of Hon'ble Appellate Tribunal for Electricity in Execution Petition No.1 of 2017 in Appeal No.228 of 2012 dated 31-05-2017.

2. The factual background giving rise to these proceedings is that M/s. SNJ Sugars and Products Limited (hereinafter called the petitioner) set up a sugar plant with a cogeneration power plant of 20 MW capacity with bagasse, a bye product of

the sugar plant, as fuel. The Andhra Pradesh Electricity Regulatory Commission by an order dated 25-01-2002 permitted the petitioner to supply the power generated by it to Transmission Corporation of Andhra Pradesh Limited (hereinafter called the APTRANSCO) and accordingly the petitioner entered into a Power Purchase Agreement with APTRANSCO on 10-07-2002 for export of 9.9 MW during sugar season and 16.94 MW during off season into the grid. The petitioner established 20 MW cogeneration power plant by 15-12-2002 but the sugar plant was not established during the crushing season of FY 2002-03 due to delay in import of the cane diffuser machine from Germany. Therefore, the petitioner obtained bagasse from neighbouring sugar plants for generating power and intimated APTRANSCO by a letter dated 09-01-2003 about the readiness of the power plant to start commercial production. The APTRANSCO in its reply dated 11-01-2003 permitted the petitioner for synchronizing the plant with the grid and from 13-01-2003, electrical energy was supplied to the grid of the APTRANSCO. The petitioner made an application to the State Electricity Regulatory Commission on 01-03-2003 seeking permission to export the entire unutilized surplus power to APTRANSCO grid by treating the crushing season also as off season. The State Commission directed the APTRANSCO by an order dated 17-03-2003 to amend the Power Purchase Agreement accordingly and APTRANSCO directed its officers on the same day to stop evacuation of power from the power plant, as it can no longer be classified as cogeneration plant. The petitioner filed W.P.No.7395 of 2003 before the Hon'ble High Court challenging the same order of APTRANSCO and the Hon'ble High Court directed the APTRANSCO to purchase power from the petitioner at the rate of Rs.2/- per unit and the APTRANSCO filed a review petition before the State Commission on 08-04-2003 to cancel the earlier directions to amend the Power

Purchase Agreement and the State Commission cancelled the earlier order by an order dated 01-10-2003. The petitioner filed CMA No.3613 of 2003 before a Division Bench of the Hon'ble High Court and obtained an interim stay order. The Hon'ble High Court quashed the letter dated 17-03-2003 of APTRANSCO by an order dated 15-02-2003 in W.P.No.7395 of 2003 and directed the APTRANSCO to evacuate the power as agreed in the Power Purchase Agreement. In WA No.371 of 2004 filed by the APTRANSCO, a Division Bench passed an interim order on 12-02-2004 directing the payment of charges to the petitioner at the rate of Rs.2.69 ps per unit and the sugar plant of the petitioner started its operation from 20-01-2004. A Division Bench of the Hon'ble High Court by order dated 30-07-2004 directed the parties to approach the appropriate forum as contemplated under the Power Purchase Agreement, while stating the petitioner to be entitled to interim relief at the rate of Rs.2.69 ps per unit till the settlement of the dispute. In Civil Appeal filed by the petitioner before the Hon'ble Supreme Court, an interim order was passed directing the APTRANSCO to pay an interim price at the rate of Rs.3.11 ps and the APTRANSCO accordingly paid the differential amount. By the final order dated 13-10-2011, the Hon'ble Supreme Court remanded the matter directing the State Commission to decide the dispute between the parties as to whether during the disputed period from 13-01-2003 to 21-01-2004 when the sugar plant did not commence its production, the unutilized power supply by the petitioner to the APTRANSCO will have the same price at par with the price supplied by the other non-conventional energy projects. Pursuant to the said directions, the State Commission passed an order dated 27-08-2012 fixing the price at the rate of Rs.0.92 ps per unit from 13-01-2003 to 31-03-2003 and Rs.0.97 ps per unit from 01-04-2003 to 20-01-2004.

3. The petitioner filed Appeal No.228 of 2012 before the Hon'ble Appellate Tribunal for Electricity which considered the question as to whether or not during the period from 13-01-2003 to 21-01-2004, the unutilized power supplied by the petitioner to APTRANSCO will have the same price as the price of power supplied by other non-conventional energy producers as determined earlier by the State Commission. In the judgment dated 04-02-2013, the Hon'ble Appellate Tribunal for Electricity noted relevant portions of the Hon'ble Supreme Court order in detail and noted that the Hon'ble Supreme Court while remanding to the State Commission specifically directed the State Commission to take into consideration the observations in the case of Transmission Corporation of Andhra Pradesh Limited Vs Sai Renewable Power Private Limited in the judgment of the Hon'ble Supreme Court dated 08-07-2010. The Hon'ble Supreme Court further directed all the relevant materials and factors also to be taken into consideration to determine the price of the power supplied during that period. The Hon'ble Appellate Tribunal for Electricity noted that the directions would clearly indicate the unutilized power supplied by the petitioner to APTRANSCO will have the same price as that for the other non-conventional energy projects in the State of Andhra Pradesh earlier determined by the Commission and so the State Commission has to decide the price by comparing with the price earlier determined by it for supply of power by other non-conventional energy projects. The Hon'ble Appellate Tribunal for Electricity found that the State Commission did not go into the question whether the petitioner would be entitled to the same price and noted that the Hon'ble Supreme Court specifically referred to the clause 2.2 of the Power Purchase Agreement which provided the price payable for the energy supplied which is to be determined on the basis of MNES guidelines taking the base price of

Rs.2.25 per unit with 1994-95 as the base year with 5% escalation upto 2003-04. The State Commission was found to have unnecessarily considered all the extraneous materials to treat the power supplied as infirm power entitled only to variable cost i.e., fuel cost. The Hon'ble Appellate Tribunal for Electricity also noted that there was never a question in relation to the authority of the petitioner to generate power and to supply it to APTRANSCO. The Hon'ble Appellate Tribunal for Electricity noted that the petitioner had no other option except to supply power to APTRANSCO in view of the prohibition of third party sale, that the APTRANSCO received the power supply, that APTRANSCO itself fixed the date of synchronization and that therefore, the APTRANSCO cannot deny the tariff given to other non-conventional energy plants. Considering all the relevant factors, the Hon'ble Appellate Tribunal for Electricity directed the APTRANSCO to pay Rs.3.32 ps per unit from 13-01-2003 to 31-03-2003 and Rs.3.48 ps per unit from 01-04-2003 to 21-01-2004 for energy supplied during the relevant periods and the amount on account of difference between the tariff fixed and the tariff paid, to be paid with simple interest at the rate of 10% per annum.

4. Accordingly, the Hon'ble Appellate Tribunal for Electricity summarized their findings and directed the APTRANSCO to pay for the energy supplied by the petitioner from 13-01-2003 to 21-04-2004 at the rate directed in the judgment and pay the balance amount due to the petitioner with simple interest at the rate of 10% per annum within one month of receipt of the order copy. C.A.No.6754 of 2013 filed by the APTRANSCO against the order of the Hon'ble Appellate Tribunal for Electricity was dismissed by the Hon'ble Supreme Court on 12-07-2016 and R.P. (C) No.3235 of 2016 for a review was also dismissed by the Hon'ble Supreme Court on 04-10-2016. E.P.No.3 of 2013 filed by the petitioner before the Hon'ble

Appellate Tribunal for Electricity was disposed of on 03-10-2013 in the meanwhile with a liberty to file a fresh Application subject to the orders of the Hon'ble Supreme Court in the Appeal.

5. The petitioner filed E.P.No.1 of 2017 on 30-11-2016 before the Hon'ble Appellate Tribunal for Electricity claiming the differential amount of principal of Rs.7,88,83,431/- and interest of Rs.13,90,53,955/- making a total of Rs.21,79,37,386/- with interest till the date of realization. The petitioner sought for attachment and sale of head office of APTRANSCO for realization of the amount.

6. The Hon'ble Appellate Tribunal for Electricity in its orders dated 31-05-2017 in E.P.No.1 of 2017 observed that they find no substance in the prayer of APTRANSCO that State of Telangana and Transmission Corporation of Telangana Limited (TSTRANSCO) have to share the liability and noted that against their order, appeal was filed by APTRANSCO before the Hon'ble Supreme Court on 08-04-2013 and rejoinder was filed in the Supreme Court appeal by APTRANSCO on 06-01-2014. Though Reorganisation Act came into force on 01-03-2014 with the appointed day as 02-06-2014, at no stage APTRANSCO raised the ground of coming into force of Reorganisation Act and its consequences. Therefore the Hon'ble Appellate Tribunal for Electricity concluded that it is not open to APTRANSCO to raise the said ground at the stage of execution to defeat the judgment of the Hon'ble Appellate Tribunal for Electricity which was confirmed by the Hon'ble Supreme Court, while it is open to APTRANSCO to initiate appropriate proceedings to recover any amount that has to be shared by TSTRANSCO which will be decided by the competent court in accordance with law. Pointing out that judgment of the

Hon'ble Appellate Tribunal for Electricity dated 04-02-2013 will have to be implemented, the State Commission was directed to calculate the exact amount due as per the judgment dated 04-02-2013 which the APTRANSCO will have to pay without loss of time and the State Commission will have to discourage any attempt to create ambiguity or reopen concluded issues or allow another round of litigation to start. Accordingly, the matter was remanded to this Commission only for the purpose of calculating the amount due as per the judgment of the Hon'ble Appellate Tribunal for Electricity dated 04-02-2013. The amount already paid to the petitioner pursuant to the order dated 09-02-2017 will be taken into account while deciding the final liability of APTRANSCO. On the amount being quantified APTRANSCO shall have to pay within a period of three weeks from the date of the State Commission's decision.

7. This Commission has issued notices to both parties and the petitioner filed detailed calculation statement duly admitting Rs.3,63,34,680/- paid by APTRANSCO as per orders in E.P.No.1 of 2017 dated 09-02-2017 and claiming a balance of Rs.16,90,96,632/- as due as on 30-06-2017 towards principal and interest along with import and export readings during the relevant period duly acknowledged for the recorded billing months by the officers of both parties (12 in number), copies of letters from the petitioner to APTRANSCO enclosing invoices (12 in number) which were enclosed to the calculation statements.

8. The respondents filed their written statement of calculations and supporting documents, again contending that the supplied energy mentioned at Para 15 of the order of the Hon'ble Appellate Tribunal for Electricity is the power supplied as per Articles 2.2, 1.4 and 1.10 of the Power Purchase Agreement, in view of para 36 of

the orders of the Hon'ble Appellate Tribunal for Electricity. Again relying on paras 43 (d) and 44 of the order of the Hon'ble Appellate Tribunal for Electricity, the respondents contended that APTRANSCO is not obligated to pay for the entire power that was generated by the petitioner. The respondents further tried to claim erroneous payments to have been made earlier for higher volumes which have to be adjusted. They also contended that due to payments made by APTRANSCO as per the interim orders of the various Fora, interest need not be paid from the dates of disputes or due dates and it is only from the date of determination of tariff by the competent authority that liability for interest would arise after expiry of 30 days there-from. The order dated 04-02-2013 of the Hon'ble Appellate Tribunal for Electricity made the interest payable from the date of the order and hence alternative calculations were submitted by the respondents. Liability prior to the order of the Hon'ble High Court dated 02-05-2003 does not arise and hence, the respondents claimed that the amounts due worked out only to Rs.2,95,06,255/-. The respondents relied on the orders of a Division Bench of the Hon'ble High Court in W.A.No.745 of 2003 against the interlocutory order of a Hon'ble Single Judge for adhoc payment of Rs.2/- per unit subject to the final result in the Writ Petition. Their Lordships of the Division Bench, while clarifying that APTRANSCO shall be bound to purchase power as per the Power Purchase Agreement and not the entire power generated by the petitioner, dismissed the Writ Appeal.

9. The petitioner in its rejoinder questioned the respondents raising and re-agitating the same issues considered and rejected by the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court. While admitting that Rs.3,63,34,680/- was paid by APTRANSCO, the petitioner stated the tariff for non-



conventional energy power plants to be Rs.3.32 ps and Rs.3.48 ps respectively for FYs 2002-03 and 2003-04 per unit and invoices of the petitioner claimed the value of the energy supplied at those prices. Joint meter readings were signed by APTRANSCO and invoices were received by APTRANSCO. Due date is 30 days from the date of presentation of the bill under the Power Purchase Agreement and the APTRANSCO ought to have opened Revolving Letter of Credit as per the agreement. Calculations of APTRANSCO try to miss Rs.1.57 crore units of power supplied and raise questions of eligible units. The petitioner also referred to the proceedings dated 14-03-2012 of APTRANSCO through the Deputy Chief Controller of Accounts/APPCC stating that since the interim orders merged with the final orders, the APTRANSCO cannot claim interest for itself from the due date, while denying it to the petitioner. The petitioner enclosed copies of further letters with invoices and other correspondence between the parties in support of its contentions. Hence, the petitioner sought for payment of Rs.16,90,96,632/- due as on 30-06-2017 and allowing the execution petition with costs.

10. The time for compliance of the directions of the Hon'ble Appellate Tribunal for Electricity dated 31-05-2017 was extended till the end of November, 2017 on I.A.No.620 of 2017 filed by this Commission before the Hon'ble Appellate Tribunal for Electricity to extend the time. Accordingly, I.A.No.620 of 2017 was disposed of by an order dated 16-08-2017 by the Hon'ble Appellate Tribunal for Electricity. During the hearing on 13-10-2017, this Commission directed both parties to file calculation memos showing the balance amount due to the petitioner from the respondents as per the judgment of the Hon'ble Appellate Tribunal for Electricity calculating simple interest at the rate of 10% per annum upto one month after receipt of the copy of the judgment of the Hon'ble Appellate Tribunal for

Electricity dated 04-02-2013. Both parties accordingly filed their respective calculation memos. The petitioner also filed copies of their further letters with invoices to the respondents.

11. The point for consideration is calculation of the quantification of the amount due to the petitioner from the respondents as per the judgment of the Hon'ble Appellate Tribunal for Electricity dated 04-02-2013, while duly taking into account the amount already paid to the petitioner pursuant to the order of the Hon'ble Appellate Tribunal for Electricity dated 09-02-2017.

12. The Power Purchase Agreement between the petitioner and the APTRANSCO dated 10-07-2002 was of course providing for supply of 9.9 MW during sugar season and 16.94 MW during off season and it is also true that during the relevant period 2002-03 and 2003-04, the sugar plant was not commissioned and only the power plant with bagasse as fuel started supplying electrical energy to APTRANSCO from 13-01-2003 after the APTRANSCO permitted synchronizing the plant with the grid on 11-01-2003. The interim order by an Hon'ble Single Judge of the Hon'ble High Court in W.P.No.7395 of 2003 to pay Rs.2/- per unit for the power purchased by the respondents from the petitioner was without any qualifications and it is true that in W.A.No.745 of 2003, the Division Bench of the Hon'ble High Court construed it to mean that it relates to power which the respondents are bound to purchase under the agreement entered into between the parties. However, it should be remembered that it was only relating to the interim directions pending the Writ Petition that anything was said therein but ultimately in the judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No.228 of 2012, it was clearly observed that neither the Hon'ble High Court nor the Hon'ble Supreme

Court ever found that the petitioner was not authorized to generate power to supply the same to APTRANSCO. The Hon'ble Appellate Tribunal for Electricity also noted that adhoc rates were fixed for the power supplied by both the Hon'ble High Court and the Hon'ble Supreme Court. The Hon'ble Appellate Tribunal for Electricity specifically rejecting the contention that there was no sanction of law to generate power and supply power, also observed that energy produced would have gone waste if the Appellant had to wait for the commissioning the sugar plant and the petitioner had no other option except to supply power to APTRANSCO. It was also noted that APTRANSCO itself fixed the date of synchronization, admittedly received the power supply by the petitioner and consumed the same. The ultimate conclusion was for payment of the price for the energy supplied. The summary of the findings of the Hon'ble Appellate Tribunal for Electricity concluded that APTRANSCO has to pay for the energy supplied from 13-01-2003 to 21-04-2004. It contains no restriction about any power to be supplied under any clauses of the Power Purchase Agreement during sugar season and off season. The plain and grammatical meaning of the findings of the Hon'ble Appellate Tribunal for Electricity is clear that whatever energy was supplied by the petitioner and received by APTRANSCO, the APTRANSCO has to pay its value as fixed by it. In fact, the direction of the State Commission dated 17-03-2003, was to amend the Power Purchase Agreement to provide for supply of such additional quantity of power by the petitioner and the fact that the sugar plant of the petitioner was not commissioned during the relevant period was known to everybody concerned and is not in dispute. Though the State Commission subsequently cancelled its earlier order dated 17-03-2003, the same was the subject of stay by the Hon'ble High Court and by virtue of the final orders of the Hon'ble Supreme Court dated

13-10-2011, the matter had to be decided by the State Commission by the orders dated 27-08-2012 which was the subject of the appeal in Appeal No.228 of 2012. As such all the earlier orders, events and documents were the subject for consideration by the Hon'ble Appellate Tribunal for Electricity in the order dated 04-02-2013, which extensively referred to the order of the Hon'ble Supreme Court dated 13-10-2011. The Hon'ble Appellate Tribunal for Electricity clearly found that the petitioner is entitled to claim the tariff as decided by the State Commission for non-conventional energy sources during the disputed period by the order dated 20-06-2001. The decretal order of the Hon'ble Appellate Tribunal for Electricity contained in para 44 of the judgment has to be implicitly obeyed by this Commission and it cannot go beyond the conclusions in the judgment as now sought to be raised again by the respondents.

13. That this is so is made clear from the orders of the Hon'ble Appellate Tribunal for Electricity dated 31-05-2017 wherein the Hon'ble Appellate Tribunal for Electricity rejected the objections of APTRANSCO about any lesser liability due to events after the reorganisation of the State and deprecated any attempts to reopen the concluded issues or start another round of litigation or attempt to create ambiguity or violate the sanctity of the judgment of the Hon'ble Appellate Tribunal for Electricity confirmed by the Hon'ble Supreme Court. The attempt of the respondents to again contend by picking up a para here and another para there in the judgment of the Hon'ble Appellate Tribunal for Electricity cannot even be remotely accepted, as the order has to be read as a whole and the unambiguous directions have to be given effect. Therefore, notwithstanding that the sugar plant was not operated during the relevant period and that Power Purchase Agreement was not amended, still the respondents have to pay for whatever energy was

supplied by the petitioner at the rates specified in the judgment of the Hon'ble Appellate Tribunal for Electricity. In any view, even on general principles of the Law of Contracts, when the power supplied and received was never intended to be gratuitous, the respondents have to compensate the petitioner of the value of such power.

14. The quantum of power supplied and received during the relevant period is in no way in controversy and the petitioner produced voluminous proof of joint meter readings, invoices and payments made. Therefore whatever principal sum is claimed by the petitioner has to be paid by the respondents about which there is no controversy in the calculations of both parties.

15. Coming to the interest payable, the Hon'ble Appellate Tribunal for Electricity in its judgment dated 04-02-2013 stated in para 42 of the judgment that the amount on account of difference between the total tariff and already paid tariff has to be paid along with simple interest at the rate of 10% per annum. The Hon'ble Appellate Tribunal for Electricity did not specify the period for which simple interest has to be paid in para 42. However, in para 44 of the judgment, the Hon'ble Appellate Tribunal for Electricity directed to pay for the energy supplied by the petitioner at the rates specified in the judgment and the balance payable shall be paid along with simple interest calculated at the rate of 10% per annum within one month of receipt of a copy of the judgment. The principle that reliefs granted by the judgment shall be summed up in the last operative portion of the judgment in precise terms as per Order XX Rule 6-A of the Code of Civil Procedure, 1908 as it stood earlier or according to the principles laid down by the Hon'ble Supreme Court even after the amendment thereof, make the directions in

para 44 of the judgment of the Hon'ble Appellate Tribunal for Electricity decretal directions binding on the parties and to be implemented by them. If so simple interest calculated at the rate of 10% per annum has to be paid by the APTRANSCO upto one month of receipt of a copy of the judgment and at any rate when till what date the interest has to be paid was not specified in the judgment, the provisions of the Code of Civil Procedure, 1908 in Section 34 (2) thereof mandate that where such a decree is silent with respect to the payment of further interest on such principal sum from the date of the decree to the date of payment or other earlier date, the court shall be deemed to have refused such interest. Sri P. Shiva Rao, learned Standing Counsel for the respondents also relied on the judgment in the matter of M/s. Him Urja Private Limited VS. Uttarakhand Electricity Regulatory Commission & another, Appeal No.178 of 2014 decided by the Hon'ble Appellate Tribunal for Electricity on 03-05-2016 to contend that only on determination of tariff, the question of payment of interest arises and claimed that ultimately tariff herein was determined only by the orders of the Hon'ble Appellate Tribunal for Electricity dated 04-02-2013. The contention runs against the findings of the Hon'ble Appellate Tribunal for Electricity in Paras 42 and 44 and cannot be sustained. Whatever was due date for payment of price of the power supplied and received under the Power Purchase Agreement between the parties, interest at the rate of 10% per annum becomes payable from that date in view of the conclusions and directions of the Hon'ble Appellate Tribunal for Electricity till one month of receipt of the copy of the judgment by the petitioner. However, future interest cannot be permitted beyond that date in view of the general principle of law embodied in Section 34 of the Code of Civil Procedure, 1908.

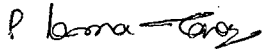
16. This Commission in adjudicating the execution proceedings cannot go behind or beyond the judgment and decree of the Hon'ble Appellate Tribunal for Electricity confirmed by the Hon'ble Supreme Court and has to act in faithful compliance of the same. As directed by the Hon'ble Appellate Tribunal for Electricity in its directions dated 31-05-2017, this Commission shall not reopen any concluded issues. With this background and for the reasons stated, the principal sum as claimed by the petitioner and as admitted by the respondents has to be paid with simple interest at the rate of 10% per annum from the respective due dates till one month of receipt of copy of the judgment by the petitioner. The date of receipt of copy of the judgment by the petitioner is claimed to be 08-02-2013. Hence, interest becomes payable upto and including 08-03-2013.

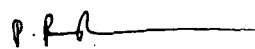
17. Accordingly, the principal sum due for FY 2002-03 will be Rs.52,72,470/- and interest from the respective due dates upto 08-03-2013 will be Rs.1,49,65,146/-, making a total of Rs.2,02,37,616/-. In respect of FY 2003-04, the principal sum due will be Rs.6,84,32,795/- and interest from the respective due dates upto 08-03-2013 will be Rs.8,60,83,402/-, making a total of Rs.15,45,16,197/-. The total amount payable for the period and quantum of energy supplied during the said two years is therefore Rs.17,47,53,813/-. The amount paid by the respondents on 23-02-2017 and 16-03-2017 put together is Rs.3,63,34,680/- which has to be deducted from the above amount, leaving a balance of Rs.13,84,19,133/-. This sum has to be paid by the respondents within three (3) weeks from today according to the directions of the Hon'ble Appellate Tribunal for Electricity dated 31-05-2017.

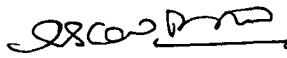
18. Therefore, the respondents shall pay Rs.13,84,19,133/- to the petitioner by or before 24-11-2017 and compliance shall be reported to the Commission on 25-11-2017.

Call on 25-11-2017.

This order is corrected and signed on this the 03<sup>rd</sup> day of November, 2017.

  
P. Rama Mohan  
Member

  
Dr. P. Raghu  
Member

  
Justice G. Bhavani Prasad  
Chairman