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M/S. DLF POWER LIMITED  
v.  
CENTRAL COALFIELDS LTD. AND ANR.

JULY 11, 2007

B

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Electricity Laws:*

C

*Electricity tariff—Fixation of—Power purchase agreement—Need for verification of capitalization of the costs incurred upto commissioning of Appellants' power plants—Direction to appoint Cost Accountants for the purpose.*

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**Respondent No.1 filed appeal before the Appellate Tribunal for Electricity challenging the order dated 4th December, 2004 as amended by order dated 28th February, 2005 passed by the State Electricity Regulatory Commission. Appellate Tribunal dismissed the appeal as incompetent and not maintainable. Hence the present appeals. During the course of hearing, this Court felt the need for verification of the capitalization of the costs incurred upto commissioning of appellants' power plants at Rajrappa and Gidi by reputed**

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**Cost Accountants.**

**Adjourning the matters and issuing certain directions, the Court**

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**HELD: The Cost Accounts Wing of M/s Ernst & Young, Chartered Accountants is directed to determine the actual capital costs based on the formula for the power purchase agreement between Coal India Ltd. and M/s DLF Power Company Ltd. for the aforesaid two plants. Copies of the report of the Cost Accounts Wing shall be given to the parties and also submitted to the State Commission. On receipt of the report, the Commission shall determine the tariff as per the terms of the power purchase agreement between the parties for the two power plants. For the purpose of verification, necessary**

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**datas and information shall be made available to the Cost Accounts Wing as may be required. Within a period of two months from the date of receipt of the report from the Cost Accounts Wing the State Commission shall determine the tariffs. Copies of the tariff order shall be issued to the parties and shall also be submitted before this Court. In case M/s Ernst & Young**

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**Chartered Accountants express any difficulty, within a period of three weeks, the Cost Accounts Wing of Neyveli Lignite Corporation Ltd., shall undertake the assignment as directed above. [Para 5] [268-F-H; 269-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3109 of 2006.

From the Final Judgment & Order dated 11.05.2006 of the Appellate Tribunal for Electricity, New Delhi in Appeal No. 166 of 2005.

WITH

C.A. No. 3561 of 2006.

S. Ganesh, Sr. Adv., Kamal Budhiraja, Amit Dhingra, Nishant Menon, Manu Seshadri, Richa Mishra (for Dua Associates), Ajit Kumar Sinha, Kamendra Mishra and Shiraz Contractor Patodia for the Appearing parties.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals is to the order dated 11th May, 2006, passed by the Appellate Tribunal for Electricity (in short 'Appellate Tribunal'). The appeal was filed by the respondent No.1 to set aside the order dated 4th December, 2004 as amended by order dated 28.2.2005 passed by the Jharkhand State Electricity Regulatory Commission, Ranchi (in short the 'State Commission').

2. While disposing of the appeal, the Appellate Tribunal held as follows:

"In the result-

(i) On the first point, we hold that the Regulatory Commission has neither the authority nor jurisdiction in terms of The Electricity Act 2003 to fix a tariff between the appellant, a consumer and the second Respondent a generator being a commercial transaction pure and simple, which relationship is governed by an existing PPA. We also hold that it is not an order or a tariff determination/order by the Regulatory Commission falling under one or more the provisions of The Electricity Act 2003, which alone is appellable.

(ii) On the second point, we hold that the Regulatory Commission as an expert Arbitral Tribunal has resolved the dispute as referred to it by parties to the dispute on invitation and it is an award in terms of the PPA entered between the parties and it is enforceable as it has all

A the force of an arbitral award passed by a validly constituted Arbitral Tribunal.

(iii) On the third point, we hold that no appeal is maintainable before the Appellate Tribunal for Electricity and appeal deserves to be rejected as not maintainable, as it is not in dispute that in law as against the award of an Arbitral Tribunal no appeal is maintainable before this Appellate Tribunal.

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(iv) On the last point, we hold that the resolution of dispute by the State Regulatory Commission is by way of arbitral proceedings and it is an award which is binding on the parties. We have neither the jurisdiction nor authority to interfere with the impugned resolution of tariff by way of arbitration: and

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(v) In the result, all the points are answered against the appellant and the appellant is not entitled to any relief in this appeal.”

D 3. The appeal was dismissed as incompetent and not maintainable.

4. During the course of hearing of the appeal it appeared to us that there is need for verification of the capitalization of the costs incurred upto commissioning of appellants' power plants at Rajrappa and Gidi. For this purpose the reputed Cost Accountants have to do the verification and for this purpose we have required the parties to suggest the names. While the appellants have suggested names of three Chartered Accountants, respondents have suggested that it will be done by Cost Accountants Unit of Neyveli Lignite Corporation Ltd., a public sector undertaking.

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5. We have considered the names suggested. We direct that let the Cost Accounts Wing of M/s Ernst & Young, Chartered Accountants determine the actual capital costs based on the formula for the power purchase agreement between Coal India Ltd. and M/s DLF Power Company Ltd. for the aforesaid two plants. Copies of the report of the Cost Accounts Wing shall be given to the parties and also submitted to the State Commission. On receipt of the report, the Commission shall determine the tariff as per the terms of the power purchase agreement between the parties for the two power plants. Needless to say that for the purpose of verification, necessary datas and information shall be made available to the Cost Accounts Wing as may be required. Within a period of two months from the date of receipt of the report from the Cost Accounts Wing the State Commission shall determine the tariffs. Copies

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of the tariff order shall be issued to the parties and shall also be submitted before this Court. In case M/s Ernst & Young Chartered Accountants express any difficulty, within a period of three weeks, the Cost Accounts Wing of Neyvely Lignite Corporation Ltd., shall undertake the assignment as directed above. A

6. Call these matters in February, 2008. B

B.B.B.

Matters adjourned.