



REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8232 OF 2023

RATTANINDIA POWER LIMITED

...APPELLANT

VERSUS

**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED AND ANOTHER**

...RESPONDENTS

J U D G M E N T

MANOJ MISRA, J.

1. This appeal under Section 125 of the Electricity Act, 2003¹ impugns the order dated 06.10.2023 passed by the Appellate Tribunal For Electricity² in Appeal No.341 of 2023 to the extent it disallows Carrying Cost to RattanIndia Power Limited³ (the appellant) on compounding interest basis.

1 2003 Act

2 APTEL

3 RPL

FACTS

2. RPL is supplying power to Maharashtra State Electricity Distribution Co. Ltd.⁴ (first respondent) under two long term Power Purchase Agreements⁵ (i.e., dated 22.04.2010 and 05.06.2010 for supply of 450 MW and 750 MW, respectively) with MSEDCL.

3. In connection therewith, RPL filed a petition (i.e., Case No.84 of 2016) under Section 86 of the 2003 Act before the Maharashtra Electricity Regularity Commission⁶ seeking compensation on account of various Change in Law events affecting the project from the date of commencement of supply of power by RPL along with the Carrying Cost, and requested MERC to allow the compensation with effect from the date of commencement of supply.

4. MERC *vide* order dated 05.04.2018 had allowed certain Change in Law claims. However, it held: (i) increase in rates of Chhattisgarh Paryavaran Upkar Cess and Chhattisgarh Vikas Upkar Cess do not qualify as Change in Law events; (ii) PPAs executed between MSEDCL and RPL do not provide compensation for Carrying Cost and therefore, RPL is not entitled to claim Carrying Cost on its approved

4 MSEDCL

5 PPA

6 MERC

Change in Law events; (iii) compensation for approved Change in Law events would be payable from Scheduled Delivery Date (for short SSD) and not for the period prior to SDD, even though supply of power commenced prior to SDD.

5. Aggrieved therewith, RPL filed Appeal No.263 of 2018 before APTEL, which was allowed *vide* its order dated 18.10.2022. The operative portion of the order dated 18.10.2022 is reproduced below:

“The impugned order to the extent it ruled against the appellant on the three above mentioned subjects is set aside. The matter to that extent is remitted to the State Commission for fresh decision bearing in mind the observations recorded as above. We shall also expect the State Commission to pass all consequential orders including quantification of the amounts payable by the licensee unto the appellant. Of course, for such purposes the Commission will ascertain the calculations from the appellant and then take the views of the licensee before determining the actual liability. We direct that the Commission shall pass all necessary orders in the wake of such determination including by taking appropriate measures such that the claims are duly satisfied in a time bound manner, expeditiously and at an early date, not later than three months from the date of this judgment.”

(Emphasis supplied)

6. Key observations/ findings in the remand order of APTEL dated 18.10.2022 are as follows:

- (i) Impact of levy of Environment Cess and Development Cess by the State of

Chhattisgarh adds to the burden of RPL inasmuch as it is passed through against the procurement of fuel from sources in the State of Chhattisgarh (*paragraph 5 of the order*).

- (ii) Carrying Cost is payable as per the provisions of PPA to compensate the affected party for time value of funds deployed on account of Change in Law events (*paragraphs 7 to 11 of the order*).
- (iii) Liability to compensate for Change in Law events will arise from the date of actual supply of power rather than SDD, particularly, in a case where supply has commenced prior to SDD (*paragraphs 13 and 14 of the order*).

7. Pursuant to the remand order dated 18.10.2022 requiring MERC to compute the amounts payable by MSEDCL to RPL for restoring it to the same economic position as if the Change in Law event had not occurred, RPL filed an application (i.e., M.A. in Diary No.257 of 2022) before MERC with the following prayer:

- (a) Direct MSEDCL to make payment of Rs.98.79 Cr. (including Carrying Cost of Rs.54.13 Cr.) in accordance with the order dated 18.10.2022 passed by APTEL in Appeal No.263 of 2018.
- (b) In the interim, direct MSEDCL to pay 75% of the claimed amount i.e., Rs.74.10 Cr. forthwith (within 7 days) till pendency of the Application; and
- (c) Pass such other and further orders as the Commission may deem fit and appropriate.

8. MERC, *vide* order dated 06.02.2023, partly allowed the said application i.e., M.A. in Diary No.257 of 2022, modified its earlier order dated 05.04.2018 to the extent ruled in the order, awarded Rs.69.38 Cr. as Change in Law compensation including Carrying Cost, required RPL to raise supplementary bill and directed MSEDCL to pay the same as per the provisions of PPA. Further, in respect of the disputed amount of Rs.1.56 Cr., a direction was issued requiring parties to reconcile in terms directed in para 14.7 of the order dated 06.02.2023.

9. The dispute *inter se* parties which was the subject matter of consideration before MERC and APTEL, and also under consideration in this appeal, is captured in paragraph 15.1 of MERC's order dated 06.02.2023, which is reproduced below:

“15.1 On the issue of determination of carrying costs towards Change in Law compensation, the Commission notes that RPL has claimed Rs. 54.13 crore whereas MSEDCL has computed Rs. 26.18 crore. The difference in the computation is due to the reason that MSEDCL has considered interest on working capital stipulated in Tariff Regulation on simple interest basis for computing the Carrying Cost whereas RPL has considered the rate of Late Payment Surcharge/ DPC stipulated in PPA with compound interest basis.”

(Emphasis supplied)

10. On the above issue, MERC held:

“15.4 ... although ATE (*should be read as APTEL*) has allowed Carrying Cost on Change in Law compensation but it has not stipulated rate at which such Carrying Cost needs to be computed. RPL has relied upon earlier ATE judgment dated 22nd March 2022 wherein ATE has directed this Commission to allow Carrying Cost at the rate of LPS (*should be read as Late Payment Surcharge*) stipulated in the PPA. In this regard, it is important to note that subsequent to ATE remand order dated 22nd March 2022, this Commission has issued consequential order dated 8 July 2022 highlighting various orders of this Commission allowing Carrying Cost at rate of interest on working capital which has been upheld by the ATE and judgment of ATE rejecting LPS rate for carrying cost and thereafter the Commission has clearly ruled that for maintaining judicial discipline it is allowing LPS rate for Carrying Cost in that remand proceeding only. Relevant part of Commission's ruling in order dated 8 July 2022 is reproduced below:

xxxxxx omitted xxxxx

In view of above, the Commission has approved Carrying Cost at the rate of LPS, limited to that remand matter only and the same cannot be used as precedent for other matters. Further, ATE judgment dated 22 March 2022 allowing Carrying Cost at LPS rate has been stayed by the Supreme Court in Adani matter and in RPL matter the Supreme Court has ruled that they will predicate the impugned order on the same basis. In this background, RPL cannot rely upon ATE judgment dated 22nd March 2022 for claiming Carrying Cost at LPS rate in the present matter.

15.5 As regards RPL's reliance on Hon'ble Supreme Court judgement in *Uttar Haryana Bijli Vitran Nigam Limited and another versus Adani Power (Mundra) limited and another* ("SC Carrying Cost judgment") wherein Supreme Court has allowed carrying cost at the rate of LPS on compounding basis, the Commission notes that factual aspect of that matter are not identical to present matter. In case of MSEDCL, Supreme Court in judgment dated 8 October 2021 (reproduced in para 16.4 above) has clearly ruled that LPS cannot be equated with Carrying Cost. Said judgment of Supreme Court is in the matter of PPAs with Generators including RPL and hence same is applicable in present matter. Therefore, Carrying Cost cannot be allowed at the rate of LPS stipulated in the PPA.

15.6 Further, the Commission notes that in the past the Commission has approved various Change in Law events for the 450 MW and 750 MW of RPL allowing carrying cost at the rate of interest on working capital as per relevant MYT Regulations or actual whichever is minimum on simple interest basis. Same was also accepted by the RPL in the past. Therefore, it cannot be the case where different basis is used for allowing Carrying Cost on Change in Law compensation allowed at different point of time.

15.7 In view of above, the Commission rules that as per earlier methodology the Carrying Cost to be

computed at a rate of interest on working capital as per relevant MYT Regulations or actual whichever is minimum on simple interest basis. Such Carrying Cost needs to be computed from the date of incurring such additional expenses on account of Change in Law event till date of this Order.”

11. Aggrieved by the aforesaid order of MERC, RPL preferred appeal before APTEL. The appeal was partly allowed by the impugned order and the matter was remanded to enable MERC to compute and direct payment of Carrying Cost to RPL at LPS rates in terms of the order of remand dated 18.10.2022.

12. Key observations/findings of APTEL in the impugned order are:

- (i) The remand order of APTEL dated 18.10.2022 was not challenged before Supreme Court and, therefore, it has attained finality in light of decision of the Apex Court in ***Jasraj Inder Singh v. Hemraj Multanchand***⁷. As a sequitur, judicial discipline would require that the said verdict is followed by MERC as well as APTEL.
- (ii) The remand order of APTEL dated 18.10.2022 required MERC to follow the earlier order passed by APTEL in

7 (1977) 2 SCC 155

Appeal No.118 of 2021 dated 22.03.2022, whereunder MERC was obligated in law to determine the amounts payable towards Carrying Cost strictly in terms of the order passed in Appeal No.118 of 2021 dated 22.03.2022 which required it to compute and determine Carrying Cost payable to the appellant at LPS rates. Therefore, both MERC and APTEL are bound by the said order and are required to compute and pay RPL the Carrying Cost at LPS rates regardless of a contrary opinion in other judgments.

(iii) There is nothing in the remand order of APTEL, dated 18.10.2022, requiring MERC to compute Carrying Cost at LPS rates on a compounding basis. Therefore, as the remand order has attained finality, such a relief cannot be claimed.

13. Aggrieved by denial of LPS rate of interest on compounding basis, RPL is in appeal before us. Interestingly, no appeal has been preferred by

MSEDCL against the impugned order to the extent it allows payment of Carrying Cost along with interest at LPS rate.

14. We have heard learned counsel for the parties and have perused the materials available on the record.

Submission on behalf of RPL/ Appellant

15. On behalf of the appellant it is submitted:

- (i) Impugned order is contrary to remand order dated 18.10.2022 and judgment dated 22.03.2022 in Appeal No.118 of 2021, where it was observed:

“16. It is a settled position of law that Carrying Cost is payable as per the provisions of PPA to compensate the affected party for time value of funds deployed on account of Change in Law events. The LPS provision in the PPA is also meant for compensation towards time value of money on account of delayed payments. Therefore, the rate prescribed for LPS in Article 11.3.4 of the PPA (i.e. SBI PLR + 2%) ought to be considered for the recovery of Carrying Cost. The appellants cannot be restored to the same economic position, as it was prior to the occurrence of the change in law events, unless the rate of interest applicable for LPS is granted.

19. The impugned orders denying the reliefs in favor of the appellants herein are thus set aside. The cases of each appellant are remitted to the Regulatory Commission for consequential orders to be passed in light of the observations/ directions recorded above. ...”

As the judgment in Appeal No.118 was between same parties, interpreting the same PPAs, it would have to be applied.

- (ii) Article 8.3.5 of the PPAs provides the rate of LPS as SBAR per annum plus 2% on compound interest basis. The rate of LPS itself includes the component of compounding interest. Hence, Carrying Cost at LPS rate envisages compounding of interest.
- (iii) The impugned order is in violation of the well settled principle of restitution in terms of which the party affected by Change in Law event is to be restored to the same economic position as it was prior to such Change in Law event. This Court's decision in ***Uttar Haryana Bijli Vitran Nigam Ltd. & Another v. Adani Power (Mundra) Ltd. & Another***⁸, which was reiterated in ***Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Ltd.***⁹, holds that to effect

8 (2023) 2 SCC 624, paragraphs 20 to 22

9 2025 SCC OnLine SC 1211, paragraphs 18 and 27

restitution, Carrying Cost ought to be granted along with interest on compounding basis as opposed to simple interest.

Submissions on behalf of MSEDCL/ First Respondent

16. On behalf of first respondent it was submitted:

- (i) In Case no.84 of 2016, RPL sought compensation on account of various Change in Law events including Carrying Cost from the date claims became effective. However, RPL neither pleaded nor argued about a specific rate of interest for such Carrying Cost.
- (ii) Against the order rejecting claim towards Carrying Cost, in the appeal (i.e., 263 of 2018), RPL relied on judgments granting Carrying Cost at the rate of Interest on Working Capital (for short IOWC) as per MYT¹⁰ Regulations, but omitted to specify the rate of grant of Carrying Cost.

¹⁰ Multi-Year Tariff

- (iii)** APTEL in the Remand Judgment dated 18.10.2022, though allowed claim towards Carrying Cost, did not direct computation of compensation with interest on a compounding basis as there was no such claim.
- (iv)** Post-remand, for the first time, a claim for Carrying Cost at the rate of LPS, relying on judgment in Appeal No.118 of 2021 dated 22.03.2022 was made.
- (v)** Pursuant to MERC order passed on remand, MSEDCL has paid Rs.25.90 Cr. to RPL towards carrying cost computed at IOWC rate as per applicable MYT Regulations on simple interest basis. And, thereafter, after APTEL's present impugned order, MSDECL recomputed the Carrying Cost claim of Rs.38.09 Cr. at LPS rate on simple interest basis and paid the balance amount of Rs.12.19 Cr. under protest to RPL.
- (vi)** RPL meets its working capital requirement from internal sources only, and, therefore, carrying cost at

IOWC rate as per MYT Regulations is already on the higher side and would over-compensate RPL.

(vii) As per Article 10 of PPA, compensation is intended to restore the affected party to the same economic position as if no Change in Law event had occurred. Therefore, allowing Carrying Cost at LPS rate itself is erroneous.

(viii) Further, the direction of interest at LPS rate is different from as per the LPS clause therefore, in absence of specific direction that Carrying Cost shall be paid as per LPS clause, compounding of interest is not acceptable. There exists a clear distinction between the grant of Carrying Cost at the LPS rate and the grant of Carrying Cost as per LPS clause. Moreover, the judgment dated 18.10.2022 referred to in the impugned order confines itself to the grant of Carrying Cost as per the

earlier methodology without specifying the rate.

(ix) Object of LPS is to ensure timely payment therefore the same cannot be equated with Carrying Cost or actual cost incurred for the supply of power as held in ***Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others.***¹¹

(x) RPL having claimed carrying cost as per MYT Regulations before MERC cannot raise a contrary claim, as held in ***Maharashtra State Electricity Distribution Company Ltd. v. Adani Power Maharashtra Ltd. and another.***¹²

Relevant Provisions in PPA

17. Before we address the rival contentions, it would be useful to notice the relevant provisions in PPA *qua* principles governing computation of impact of Change in Law event. Article 10.2.1 lays

11 (2022) 4 SCC 657, paragraph 177

12 (2023) 14 SCC 752, paragraph 35.

down the underlying principle for determining the consequence of Change in Law. It reads thus:

“10.2.1 While determining the consequence of Change in Law under this Article 10, the party shall have due regard to the principle that the purpose of compensating the party affected by such Change in Law, is to restore through monthly tariff payment, to the extent compensated in this Article 10, the affected party to the same economic position as if such Change in Law has not occurred.”

18. Article 10.3 is regarding the ‘Relief for Change in Law’. The relevant sub-articles of Article 10.3 of the PPA are reproduced below:

“10.3.1 During Construction Period

As a result of any Change in Law, the impact of increase/ decrease of Capital Cost of the Power Station in the Tariff shall be governed by the formula given below:

For every cumulative increase/ decrease of each Rs. 1.25 lakhs in the Capital Cost during the Construction Period, the increase /decrease in Non Escalable Capacity Charges shall be an amount equal to 0.267% of the Non Escalable Capacity Charges. In case of dispute, Article 14 shall apply.

It is clarified that the above-mentioned compensation shall be payable to either party, only with effect from the date on which the total increase/ decrease exceeds amount of Rs.1.25 lakhs in the per MW capital cost, in relation to the Installed Capacity.

10.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the seller is in excess of an amount equivalent to 1% of the value of the letter of credit in aggregate for the relevant Contract Year.

10.3.3 For any claims made under Articles 10.3.1 and 10.3.2 above, the Seller shall provide to the procurer and the appropriate Commission documentary proof of such increase /decrease in cost of the Power Station or revenue/ expense for establishing the impact of Change in Law.

10.3.4 The decision of the Appropriate Commission, with regards to the determination of the compensation mentioned above in Articles 10.3.1 and 10.3.2, and the date from which such compensation shall become effective, shall be final and binding on both the parties subject to right of appeal provided under applicable law.”

19. Article 10.5 provides for Tariff Adjustment Payment on account of Change in Law. Relevant sub-articles of Article 10.5 are reproduced below:

“10.5.1 Subject to Article 10.2, the adjustment in monthly tariff payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the law or Change in Law; or

(ii) the date of order/ judgment of the Competent Court or Tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of law.

10.5.2 The payment for change in law shall be through supplementary bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the monthly invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed Tariff.”

20. Article 8.8 is regarding payment of Supplementary Bill. Relevant sub-articles of Article 8.8 are reproduced below:

“8.8.1 Either party may raise a bill on the other Party (‘Supplementary Bill’) for payment on account of:

(i) Adjustments required by the Regional Energy Account (if applicable);

(ii) Tariff payment for change in parameters, pursuant to provisions in Schedule 4; or

(iii) Change in law as provided in Article 10,

and such supplementary bill shall be paid by the other party.

8.8.2 The procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller's Designated Account by the due date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under the Supplementary Bill raised by the Procurer by the due date to concerned Procurer's designated bank account and notify such Procurer of such payment on the same day. For such payments by the Procurer, rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.

8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its due date, a late payment surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.”

21. Late Payment Surcharge (for short LPS), as per PPA, shall have the meaning ascribed thereto in Article 8.3.5 of the PPA. Article 8.3.5 reads thus:

“8.3.5 In the event of delay in payment of a monthly bill by the Procurer beyond its due date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, regulated on a day-to-day basis (and compounded with monthly rest), for each day of delay. The Late Payment Surcharge shall be claimed by the seller through the Supplementary Bill.”

22. SBAR, as per PPA, shall mean the prime lending rate per annum applicable for the loans with one year maturity as fixed from time to time by the State Bank of India. In absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties.

23. A conjoint reading of the aforesaid provisions, *inter alia*, make it clear that,-

- (i) the object of providing for compensation on account of a change in law event is to restore the affected party to the same economic position as if the change in law event did not occur (See 10.2.1 of PPA);
- (ii) the restoration is through monthly tariff payment (See 10.2.1 of PPA);
- (iii) the adjustment in monthly tariff payment shall be effective from (a) the date of adoption, promulgation,

amendment, re-enactment or repeal of the law or change in law; or (b) the date of order/ judgment of the Competent Court or Tribunal or Indian Governmental Instrumentality, if the change in law is on account of a change in interpretation of law (See 10.5.1 of PPA);

- (iv)** the payment for change in law shall be through supplementary bill (See 10.5.2 of PPA);
- (v)** when a party raises supplementary bill for change in law event, the procurer shall remit the amount by the due date (See 8.8.2 of PPA);
- (vi)** in the event of delay in payment of a supplementary bill beyond its due date, LPS shall be payable at the same terms applicable to the monthly bill (See 8.8.3 of PPA);
- (vii)** LPS shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding

payment, regulated on a day-to-day basis (and compounded with monthly rest), for each day of delay (See 8.3.5 of PPA); and

(viii) LPS shall be claimed by the seller through supplementary bill (See 8.3.5 of PPA).

24. What is clear from above is that LPS is payable at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, regulated on a day-to-day basis (and compounded with monthly rest), for each day of delay.

Issues

25. Upon consideration of the submissions and perusal of materials on record, in our view, the following issues arise for adjudication:

- (i) Whether LPS on Carrying Cost had to be paid to the Appellant under the remand order dated 18.10.2022 and that too, without compounding of interest? If so, whether, in absence of an appeal against the order dated 18.10.2022, the

direction to pay LPS on Carrying Cost had attained finality?

- (ii) Whether, in absence of a cross-appeal against the impugned order, the direction to pay LPS on Carrying Cost cannot be questioned by the first respondent?
- (iii) Whether the direction to pay Carrying Cost with LPS is liable to be interfered with in exercise of powers under Article 136 of the Constitution?
- (iv) Whether direction to pay Carrying Cost with interest at LPS rate would include compounding of interest as per LPS provision in the PPA?

Relevant provisions regarding appeals under 2003 Act

26. Before addressing the issues framed above, it would be useful to have an overview of the statutory provisions regarding appeals under the 2003 Act and the procedure to be followed while dealing with those appeals.

27. Section 111¹³ of the 2003 Act provides for appeals to APTEL. According to sub-section (1), any person aggrieved by an order made either by the adjudicating officer, or an Appropriate Commission, may prefer an appeal to APTEL within the period specified in sub-section (2). Sub-section (2) provides that the appeal ought to be in such form, verified in such manner and accompanied by such fee as may be prescribed. However, under sub-section (6), APTEL may, on its own motion (*i.e., suo motu*), for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under the Act, as the case may be, in relation to any proceeding, call for the records of such proceedings and make such order in the case, as it thinks fit.

13 Section 111. Appeal to Appellate Tribunal. – (1) Any person aggrieved by an order made by an adjudicating officer under this act except under section 127 or an order made by the appropriate Commission under this act may prefer an appeal to the appellate tribunal for electricity:

(2) Every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

(3) to (5)xxxxx

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit

28. Section 120¹⁴ of the 2003 Act provides for the procedure and powers of the Appellate Tribunal. Interestingly, though, under sub-section (2), it has various powers as vested in a civil court while trying a suit, sub-section (1) provides that it is not bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and shall have powers to regulate its own procedure. As a sequitur, APTEL is empowered to devise its own procedure in conformity with the principles of natural justice.

29. However, what is important is that, under sub-section (3) of Section 120, an order made by APTEL is executable as a decree of civil court, which, in effect, means that the order passed by APTEL is final, unless set aside or modified in an appeal under Section 125¹⁵ of the 2003 Act.

14 Procedure and powers of Appellate Tribunal. - (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

(2) The Appellate Tribunal shall have for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely: -

.....XXXXX.....

(3) An order made by the appellate tribunal under this act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

15 Section 125. Appeal to Supreme Court. - Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period allow it to be filed within a further period

30. Section 125 of the 2003 Act provides for a statutory appeal to the Supreme Court. Under Section 125, any person aggrieved by any decision or order of APTEL, may, within sixty days from the date of communication of the decision or order of APTEL to him, file an appeal on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908¹⁶.

31. What is important is that, unlike APTEL, which can exercise *suo motu* powers under sub-section (6) of Section 111 of the 2003 Act, the powers of this Court, under Section 125 of the 2003 Act, are invocable through an appeal filed by a person aggrieved. In consequence, if the aggrieved person does not file an appeal, or a cross-appeal/ cross-objection, under Section 125, impugning the order, or any portion of it, passed by APTEL, it cannot question the correctness of the same in an appeal preferred by another person questioning that much portion of the order with which it is aggrieved.

32. No doubt, statutory limitations cannot dilute the constitutional powers vested in this Court

not exceeding sixty days.
16 CPC

under Article 136 of the Constitution of India¹⁷. Though powers under Article 136/142 can be exercised by this Court even *suo motu* and/or to do complete justice in a *lis*, there have to be compelling circumstances for its exercise¹⁸.

33. Now, we shall address the issues formulated above.

Issue (i)

34. APTEL in the impugned order held that since the remand order (i.e., order dated 18.10.2022 passed in Appeal No.263 of 2018) had attained finality, whereby it directed computation of compensation in the light of observations made therein, and it cited earlier orders *inter se* parties requiring payment of compensation for increase in Carrying Cost with LPS, interest at LPS rate had to be paid. However, APTEL observed that since the remand order did not provide for compounding of interest, the same would not be permissible as the remand order binds both sides. In that context, issue (i) (*supra*) arises for our consideration.

17 See: Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal, (1954) 2 SCC 602 : 1954 SCC OnLine SC 47, paragraph 8; See also: Laliteshwar Prasad Sahi v. Bateshwar Prasad, AIR 1966 SC 580: 1965 SCC OnLine SC 104

18 See: A. Subash Babu v. State of A.P., (2011) 7 SCC 616, paragraph 66

35. What is clear from the record is that Appeal No.263 of 2018 was filed before APTEL against (a) denial of compensation on certain change in law events; (b) denial of Carrying Cost on account of change in law events; and (c) the date from which the compensation on account of change in law events was directed to be paid to the appellant. The said appeal was allowed *vide* order dated 18.10.2022, whereby the impugned order, to the extent it ruled against the appellant on the above three issues, was set aside and the matter was remanded to MERC for a fresh decision bearing in mind the observations made in the remand order.

36. Although there is no specific direction in the remand order to pay interest at LPS rate on Carrying Cost but, what is clear is that in the remand order, MERC was directed to decide the matter bearing in mind the observations made in the order. In such circumstances, the observations in the remand order play a critical role.

37. Upon going through the remand order, we find that paragraph 11 thereof throws light on how compensation towards Carrying Cost is to be computed. The same is reproduced below:

“11. Again, in *RattanIndia Power Limited v. Maharashtra Electricity Regulatory Commission and Anr.* (appeal no.118/2021 decided by judgment dated 22/3/2022), while directing the State Commission to determine the amounts payable by the distribution licensee (MSECDL) we had also directed a revisit to the prayer for carrying cost bearing in mind the well settled principles on the subject in light of decisions in the cases of *Uttar Haryana (supra)*, *Energy Watchdog and others v. CERC and others* (2017) 14 SCC 80 and *Jaipur Vidyut Vitran Nigam Ltd. and Ors. v. Adani Power Rajasthan Ltd. & Anr.* 2020 SCC OnLine SC 697.”

38. What is reflected from paragraph 11 of the remand order is that APTEL had referred to earlier decision dated 22.03.2022, *inter se* parties, in Appeal No.118 of 2021 and certain decisions of this Court settling the applicable principles. In consequence, the observations/ directions in the order dated 22.03.2022 assume importance. In our view, paragraphs 15 and 16 of the order dated 22.03.2022 are relevant and, therefore, are reproduced below:

“15. We propose to direct the Commission to determine the amounts payable by the respondent distribution licensee in favour of each of these appellants to compensate them for restoring through monthly tariff payments to the same economic position as if such change in law event had not occurred. It would be appropriate to also direct the Commission to revisit the prayer for carrying cost bearing in mind the well settled principles on the said subject [e.g., *Energy Watchdog (supra)*; *Uttar Haryana and another (supra)*; and *Jaipur Vidyut Vitran Nigam Limited and others V. Adani Power Rajasthan Limited and Anr.* 2020 SCC OnLine SC 697].

16. It is a settled position of law that carrying cost is payable as per the provisions of PPA to compensate the affected party for time value of funds deployed on account of change in law events. The LPS provision in the PPA is also meant for compensation towards time value of money on account of delayed payments. Therefore, the rate prescribed for LPS in Article 11.3.4 of the PPA (i.e., SBI PLR plus 2%) ought to be considered for the recovery of carrying cost. The appellants cannot be restored to the same economic position, as it was prior to the occurrence of the change in law events, unless the rate of interest applicable for LPS is granted.

(Emphasis supplied)

39. When the extracts of the earlier order dated 22.03.2022 are read with the remand order dated 18.10.2022, it becomes clear that APTEL while passing the remand order dated 18.10.2022 was of the view that the observations in the earlier order, which had referred to certain decisions of this Court, had settled the law regarding grant of LPS while compensating a power generator for increase in Carrying Cost on account of change in law event. In that light, APTEL observed that MERC was required to follow those settled principles while computing the compensation payable.

40. In our view, the remand order dated 18.10.2022 had not decided the issue relating to grant of LPS though it did indicate, by referring to certain decisions, that compensation for increase in Carrying Cost is to be with LPS benefit. Thus,

though we do not find fault with the impugned order of APTEL that the remand order indicated grant of LPS benefit, we do not agree with the view of APTEL that MERC or APTEL were bound by those observations and could not have taken a decision *qua* LPS by taking notice of the law relating to grant of LPS benefit. Reason is simple, the issue regarding grant of LPS benefit on Carrying Cost was not decided. Rather, there was a remand whereunder MERC was required to decide the issue bearing in mind the observations in the judgment/ order. Ordinarily, when a matter is remanded the *lis* is alive, unless directed otherwise. Therefore, the *lis* has to be decided in accordance with law. Rather, it is duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same¹⁹. No doubt, judicial discipline requires that directions of a higher court must be followed by the court subordinate to it. However, there may be a situation where following a direction may amount to violating the binding law laid down by a superior court or the Apex Court. In such a situation, where the *lis* is alive, the subordinate court or adjudicating body

19 See: United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd., (2000) 7 SCC 357, paragraph 20.

will have to apply and follow the law which holds the field on the day it decides the matter.

41. In our view, when a Court or Appellate Tribunal remands a matter to the subordinate court, or adjudicating body, for a fresh decision in the light of observations contained therein, and while doing so refers to certain decisions, it does not mean that the subordinate court or adjudicating body is bound by those decisions and can look no further, even if, in the interregnum, the law has changed or developed. We must not be understood as saying that such a direction has to be ignored. Rather, such a direction must be given due consideration unless the law on the subject, which is binding on the court or adjudicating body, requires otherwise.

42. For example, the law declared by this Court is binding on all courts within the territory of India²⁰. However, if such declaration comes later i.e., after the remand order, could it be said that it would not be followed because of certain general observations in the order of remand. The answer to it is an obvious “No”. Reason being, when the remand order does not itself settles an issue, the issue

²⁰ Article 141 of the Constitution of India

remanded is alive and has to be decided as per law applicable on the date of the decision.

43. For the reasons above, we are of the view that APTEL, though rightly observed that the remand order indicated award of LPS benefit, erred in holding that it can look no further than the order of remand. Issue (i) is decided in the aforesaid terms.

Issue (ii)

44. This appeal under Section 125 of the 2003 Act is by a power generator to the extent APTEL denied compounding of interest at LPS rate on Carrying Cost. APTEL, however, accepted the compensation claim for carrying cost along with interest at LPS rate.

45. Section 125 of the 2003 Act enables a person aggrieved by an order of APTEL to prefer an appeal before this Court on any of the grounds specified in Section 100 of CPC. Admittedly, there is no cross-appeal or cross-objection by MSEDCL (the first respondent) against the order of APTEL.

46. Powers of this Court, under Section 125 of the 2003 Act, are invocable by a person aggrieved through an appeal filed within a specified period on

any of the grounds specified in Section 100 of CPC. Section 125, unlike Section 111(6) of the 2003 Act, does not provide for *suo motu* exercise of those powers.

47. In general, while hearing an appeal, the appellate court, in absence of a provision to the contrary, may allow a respondent to question a finding returned against him by the court against whose order the appeal is filed. However, where the operative order is against the respondent, without filing an appeal or cross-appeal/ cross-objection, the respondent cannot question the correctness of the operative order. More so, when the appellant has limited its prayer in the appeal to only certain part of the operative order.

48. The aforesaid legal position has been explained by this Court in **Banarsi v. Ram Phal**²⁰, rendered in the context of the provisions of Order 41 Rules 22 and 33 CPC, where it was held:

“10. ... A respondent may defend himself without filing any cross objection to the extent to which the decree is in his favor; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by the 1976 amendment is clarificatory and also enabling and this may be made precise by analyzing the provision. There may be three situations:

(1) The impugned decree is partly in favor of the appellant and partly in favor of the respondent.

20 (2003) 9 SCC 606

(2) The decree is entirely in favor of the respondent though an issue has been decided against the respondent.

(3) The decree is entirely in favor of the respondent and all the issues have also been answered in favor of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (1) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favor he is entitled to support without taking any cross-objection. The law remains so post amendment too. In the type of cases (2) and (3) pre-amendment CPC did not entitle nor permit the respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favor and he may support the decree without cross-objection; the amendment made in the text of sub-rule (1), read with explanation newly inserted, gives him a right to take cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In the pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross-objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. ...”

49. We are conscious that provisions of CPC are not strictly applicable to a statutory appeal under Section 125 of the 2003 Act, but general principles thereof can be applied, particularly, when powers under Section 125 of the 2003 Act are invocable by a person aggrieved through an appeal, filed within a specified time, on any one or more of the grounds specified in Section 100 CPC.

50. Besides above, when a person fails to file an appeal or a cross-appeal, it can be taken that he is not aggrieved by the operative part of the order against which, or some part of which, the appeal is filed by some other person.

51. In such circumstances, we are of the view that by not preferring an appeal or cross-appeal /objection against the order of APTEL, MSEDCL has given up its right to challenge the award of compensation to the appellant of Carrying Cost with interest at LPS rate. Issue (ii) is decided accordingly.

Issue (iii)

52. No doubt, statutory limitations cannot override constitutional powers of this Court under Articles 136/142 of the Constitution. However, in

commercial matters, where a statutory regime is in place, exercise of constitutional powers should be in exceptional or rare circumstances and not as a matter of course. We do not find any such circumstances obtaining as to warrant exercise of those powers. Issue (iii) is decided accordingly.

Issue (iv)

53. In **Uttar Haryana Bijli**²¹, a three-Judge Bench of this Court held:

“20. ... Once carrying cost has been granted in favor of Respondent 1, Adani Power, it cannot be urged by the appellants that interest on carrying costs should be calculated on simple interest basis instead of compound interest basis. Grant of compound interest on carrying cost and that too from the date of occurrence of the change in law event is based on sound logic. The idea behind granting interest on carrying cost is not far to see, it is aimed at restituting a party that is adversely affected by a change in law event and restore it to its original economic position as if such a change in law event had not taken place. ..

23. We are not persuaded by the submission made on behalf of the appellants that since no fault is attributable to them for the delay caused in determination of the amount, they cannot be saddled with the liability to pay interest on carrying cost; nor is there any substance in the argument sought to be advanced that there is no provision in the PPAs for payment of compound interest from the date when the change in law event had occurred.”

(Emphasis supplied)

21 See: Footnote 8

54. In **Jaipur Vidyut Vitran Nigam Ltd.**²² , this Court reiterated the principle laid down in **Uttar Haryana Bijli** (*supra*) and clarified that the payment for change in law event shall be through Supplementary Bill, which can be raised only after due adjudication by the competent forum.

55. What is important is that compensation for the change in law event is to be paid with effect from the date the change in law event occurred (See Article 10.5.1 of PPA). But as Supplementary Bill in respect thereof can be raised only after adjudication, this Court has applied the principle of restitution and allowed charging of interest from the date of occurrence of the change in law event. However, whether compounding of interest would be necessary to reconstitute a power generator to its original economic position is a question which would have to be addressed on the facts of the case. It may be observed here that in **Uttar Haryana Bijli** (*supra*) there was a specific case of the power generator that it had paid interest with monthly rests²³. Therefore, in our view, this aspect would have to be determined on facts.

²² See: Footnote 9

²³ See: Paragraph 21 of the judgment

56. The argument on behalf of the first respondent that appellant had claimed carrying cost as per MYT Regulations before MERC and, therefore, cannot raise a claim at LPS rate has no legs to stand as no appeal has been preferred by the first respondent against the impugned order which allowed carrying cost with interest at LPS rate.

57. No doubt, LPS clause in the PPA includes compounding of interest but APTEL allowed interest at LPS rate and not as per LPS clause, therefore, whether compounding of interest is to be allowed would have to be decided. Since APTEL denied compounding of interest on the ground that it was not specifically provided for in the remand order, in view of our finding on issue (i) (supra), this issue would have to be decided afresh.

58. As we have already held that remand order dated 18.10.2022 had issued no specific direction to apply a particular rate, observations contained therein were by way of guidance and did not limit the power of MERC or APTEL to decide the issue as per the law. In this view of the matter, we deem it appropriate to remand the matter back to APTEL to decide the issue of compounding of interest based

on the facts of the case, and in accordance with the law. We, however, clarify that grant of interest at LPS rate as directed by APTEL in the impugned order shall not be disturbed. The only issue left for APTEL to decide is *qua* compounding of interest. Rest of the issues stand closed.

59. Appeal is allowed in the aforesaid terms.

60. There is no order as to costs. Pending applications, if any, stand disposed of.

.....J.

(MANOJ MISRA)

.....J.

(JOYMALYA BAGCHI)

New Delhi;
December 10, 2025