

SUPREME COURT DIRECTS APTEL TO RE-CONSIDER VACATING ITS STAY ORDER IN LIGHT OF TRUING UP ORDER PASSED BY WBERC



SKV Law Offices successfully represented Damodar Valley Corporation (“DVC”) before the Hon’ble Supreme Court of India in its challenge to an Order passed by the Appellate Tribunal for Electricity (“APTEL”) dismissing Applications filed by DVC seeking vacation of stay granted by APTEL on recovery of tariff arrears for FY 2017-18 in the Appeals filed by the Consumers/Consumer Associations of DVC.

Brief Background

The Civil Appeal was filed by DVC challenging the common order dated 05.04.2024, passed by APTEL in various interim applications associated with the appeals filed by power consumers against the tariff determination Order issued by the West Bengal Electricity Regulatory Commission (“WBERC”) for FY 2017-18. A brief sequence of events leading up to the filing of the Appeals before APTEL are as follows:

- WBERC had issued a Tariff Order on 05.05.2022, determining the Aggregate Revenue Requirement (“ARR”) and consequently the tariff for distribution and retail supply for DVC for FY 2017-18.
- This Tariff Order was challenged by the consumers/consumer associations of DVC before APTEL on the grounds that it was based on projected figures instead of actual audited figures, despite the availability of the latter.
- APTEL issued an Interim Order on 06.06.2022 granting a stay on the recovery of tariff arrears based on the WBERC’s Tariff Order, however directing consumers to pay the tariff as determined.
- Subsequently, APTEL passed an Order on 17.10.2022 staying the entire Tariff Order passed by WBERC.
- The Order dated 17.10.2022 was challenged by DVC before the Hon’ble Supreme Court and by its Order dated 23.11.2022, the Hon’ble Supreme Court vacated APTEL’s blanket stay Order dated 17.10.2022, and restored the earlier Interim Order dated 06.06.2022, until the Appeals before APTEL were finally disposed of.
- In view of the Order dated 23.11.2022, DVC had approached APTEL by way of an Application seeking setting aside of the Interim Order dated 06.06.2022, which was dismissed by APTEL by an Order dated 31.03.2023 while holding that since the interim arrangement had been restored on account of Hon’ble Supreme Court’s Order dated 23.11.2022, the same could not be vacated by APTEL.

- The Order dated 31.03.2023 passed by APTEL was again challenged by DVC before the Hon'ble Supreme Court and subsequently, by its Order dated 15.05.2023, the Hon'ble Supreme Court directed that the entire issue could be resolved if WBERC carries out the truing-up exercise without being influenced by the Orders passed by APTEL.
- WBERC concluded the truing-up process and issued the Order dated 18.09.2023, which indicated a higher revenue gap for DVC based on actual audited figures.
- In view of the Order dated 18.09.2023 passed by WBERC, DVC filed Applications before APTEL to vacate the Interim Orders under Order 39 Rule 4 of the Civil Procedure Code, 1908 on the grounds of changed circumstances and undue hardship caused by the stay on arrears recovery.
- However, APTEL by its Order dated 05.04.2024 dismissed DVC's Applications to vacate the interim stay orders, indicating that the Supreme Court's Order dated 23.11.2022, was binding and the appeals before APTEL needed to be disposed of first.

Hon'ble Supreme Court's Order dated 17.05.2024

The Order dated 05.04.2024 passed by APTEL was challenged by DVC before the Hon'ble Supreme Court in Civil Appeal No. 5890-93 of 2024.

Subsequently, on 17.05.2024, the Hon'ble Supreme Court disposed of the Civil Appeals filed by DVC and held as under:

- The Hon'ble Supreme Court observed that APTEL had held that it was not appropriate to vacate or vary the interim orders without the Hon'ble Supreme Court's directions in the Order dated 23.11.2022, restoration of the Interim Order dated 06.06.2022.
- The Hon'ble Supreme Court, without going into the merits of the case, acknowledged the subsequent developments, particularly WBERC's truing-up Order dated 18.09.2023, and the undue hardship claimed by DVC.
- In light of the same, the Hon'ble Court observed that there was a need to either reconsider the Interim Order dated 06.06.2022 or dispose of the appeals pending before APTEL.

- It was further clarified that the Order dated 23.11.2022 should not impede APTEL from reconsidering the Interim Order dated 06.06.2022 in light of WBERC's Order dated 18.09.2023 or hearing the appeals on merit.
- Accordingly, the Hon'ble Court directed APTEL to re-evaluate the Interim Order dated 06.06.2022 considering the truing-up order by WBERC.

DVC was represented by Mr. Shri Venkatesh, Managing Partner, Mr. Bharath Gangadharan, Counsel, Mr. Nihal Bharadwaj, Senior Associate and Mr. Aashwyn Singh, Associate from SKV Law Offices.

[SKV Note: The Hon'ble Supreme Court's Order dated 17.05.2024 essentially provides APTEL the latitude to reconsider the Interim Order affecting DVC in light of the financial realities presented by the truing-up process based on the actual audited accounts, without being restricted by the previous interim arrangements upheld by the Hon'ble Supreme Court. This allows for the potential resolution of the issues surrounding the recovery of tariff arrears and the financial implications for DVC.]

The Order dated 17.05.2024 passed by the Hon'ble Supreme Court can be accessed [here](#).