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## Case Update

### APTEL MODIFIES ITS STAY ORDER, DIRECTS 50% RECOVERY OF TARIFF ARREARS BY DVC FROM ITS CONSUMERS WHILE DIRECTING THE CONSUMERS TO PROVIDE BANK GUARANTEES FOR THE REMAINING 50%



On 17.01.2025, the Appellate Tribunal for Electricity (“APTEL”) passed an order to modify its earlier Stay Orders granted in Appeals filed by consumers of Damodar Valley Corporation (“DVC”). These Stay orders passed by APTEL granted a stay in favour of DVC’s consumers on the recovery of tariff arrears determined by the West Bengal Electricity Regulatory Commission (“WBERC”) for the FY 2017-18 control period.

On 05.05.2022, WBERC, after a period of almost 6 years, passed the Tariff Order for FY 2017-18 thereby determining the tariff for the distribution and retail supply for 2017-18 based on the projections submitted by the Applicant in December 2016. WBERC, while determining the tariff for 2017-18, directed that all rates and tariff mentioned shall be effective from 01.04.2017 and any adjustment in energy bills from the period 01.04.2017 till date shall be made by DVC in eight instalments in the bills for the month of June 2022 and onwards.

Aggrieved by the same, some consumers of DVC preferred Appeals before APTEL challenging WBERC’s Order dated 05.05.2022. In Appeal No. 286 of 2023, APTEL issued an interim order on 06.06.2022 granting a stay on the recovery of arrears as per the tariff determined by WBERC in the Order dated 05.05.2022 (“Tariff Order”). Subsequently, similar stays were granted in Appeal No. 244 of 2022 on 21.06.2022 and in Appeal No. 288 of 2023 on 01.07.2022, aligning with the order passed on 06.06.2022. These ex parte ad interim stay orders temporarily halted the enforcement of WBERC’s directive to recover tariff arrears, with the condition that the appellants pay the full tariff as determined in the Tariff Order.

Notably, the stay was granted by APTEL primarily on the basis that the Tariff Order had been passed by WBERC, after a period of almost 6 years after the FY 2017-18 tariff period had ended. It is further notable that the tariff was computed by the WBERC in its Order dated 05.05.2022 on the basis of projected figures when the actual audited accounts for FY 2017-18 were available. Further, the Appellants had contended that if the audited figures were taken into account, the tariff, as determined in the Tariff Order, would have been significantly lesser.

During the pendency of the batch of Appeals before APTEL, on 08.10.2022, DVC filed the Annual Performance Review (“APR”) Petition before WBERC for truing up of the Aggregate Revenue Requirement (“ARR”) and tariff for the control period FY 2017-18 based on the actual audited figures. On 18.09.2023, WBERC passed its Order in the APR Petition, and in fact determined that the actual recoverable amount was higher than the amount previously assessed.

In view of the above, DVC filed Applications before APTEL seeking vacation of the Stay granted by APTEL in terms of the Stay Orders, mainly on the grounds that Order 39 Rule 4 of the Civil Procedure Code, 1908 (“CPC”) mandated that a stay granted by a court may be vacated on account of change in circumstances and undue hardship.

On 17.01.2025, APTEL disposed of the Applications filed by DVC seeking vacation of stay. APTEL, after deliberation, decided not to completely vacate the stay orders previously granted but to modify them to balance the interests of the parties. It directed that 50% of the arrears, as determined by the impugned tariff order, must be paid by the Appellants within 30 days. The remaining 50% will remain stayed, provided the Appellants furnish an unconditional bank guarantee of an equivalent amount from a scheduled bank within the same 30-day period. APTEL also directed that the Appellants must also continue paying the full tariff as per the earlier interim orders. The arrangement directed by APTEL is provisional and subject to the outcome of the main appeals. The interim applications were disposed of, and the appeals are scheduled to be taken up for final hearing in due course.

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

A copy of the order can be accessed [here](#)