

MONDAY | 17 FEBRUARY 2025

Case Update

SC UPHOLDS APTEL'S MODIFIED INTERIM ORDER DIRECTING PAYMENT OF ARREARS AND FURNISHING BANK GUARANTEES BY DVC'S CONSUMERS, DOES NOT FIND SUFFICIENT GROUNDS TO INTERFERE



The Supreme Court upheld Appellate Tribunal for Electricity ("APTEL") order dated 17.01.2025 ("modified interim order"), modifying its earlier Stay Orders granted in Appeals filed by consumers of Damodar Valley Corporation ("DVC"). The court did not find sufficient grounds to interfere with the said order. The decision indicates that the interim arrangements established by APTEL by the modified interim order would continue until the main appeals are heard and disposed finally.

The genesis of the dispute was DVC's order dated 05.05.2022 ("tariff order") issued by the West Bengal Electricity Regulatory Commission ("WBERC"), for its consumers in West Bengal in FY 2017-18 based on the projections submitted by the DVC in December 2016. The 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.

Being aggrieved by the same, consumers of DVC preferred Appeals before APTEL challenging the tariff order, wherein by interim stay orders the enforcement of WBERC's directive to recover tariff arrears was stayed, with the condition that the appellants continue 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 and 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.

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 ("true up order"), 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 of change in circumstances and undue hardship.

By the modified interim order, APTEL disposed of the Applications filed by DVC seeking vacation of stay. APTEL modified its earlier stay orders 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.

Further, by its Order dated 14.02.2025, the Hon'ble Supreme Court of India was also pleased to dispose off the civil appeals filed by the consumers of DVC against the modified interim order, being Civil Appeals No(s). 1976/2025 and 2281/2025. The Apex Court refused to interfere with APTEL's modified interim order. However, the it granted additional time until April 30, 2025 to DVC's consumers to comply with APTEL's directives, with no further extensions to be granted.

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](#).