

COURT- 2

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APL No. 204 OF 2016 & IA No. 195 OF 2019

Dated: 5th December, 2019

**Present: Hon'ble Mr. Ravindra Kumar Verma, Technical
Member(Electricity)
Hon'ble Mr. Justice R.K. GAUBA, Judicial Member**

In the matter of:

Aravali Power Company Private Ltd.

.... Appellant(s)

Versus

Haryana Power Purchase Center & Ors.

.... Respondent(s)

Counsel for the Appellant(s) : M.G. Raachandran
Sr. Adv.
Ranjitha Ramachandran
Arvind Kumar Dubey
Anushree Bardhan
Poorva Saigal For App1

Counsel for the Respondent(s) : For Res1
Ranjana Roy Gawai For Res2
Raj Bahadur Sharma For Res3
Sethu Ramalingam For Res5

ORDER

IA No. 195 OF 2019 - (for amendmen of the memo of Appeal).

Heard.

The main appeal under Section 111 of the Electricity Act, 2003 was filed in April, 2016 impugning order dated 06.05.2015 of the Central Electricity Regulatory Commission ("Central Commission"). It may be noted here that at that point of time, a Review Petition of the Applicant (Appellant) against some parts of the said Impugned Order, registered as Review Petition No.12 of 2015, was pending before the Central

Commission, it having being presented on 22.06.2015 by the Petitioner (pleadings inadvertently mention NTPC to be the Review Petitioner). The Central Commission, it so happens, had entertained the Review Petition on three grounds rejecting the other grounds. Thus, by order dated 09.02.2016, while presenting the appeal at hand the Appellant had clarified (Para 'O' at Page 9) that it was reserving right to raise the other issues subject to the outcome of the Review Petition which was then pending.

The Review Petition was eventually decided by the Central Commission by Order dated 27.06.2016. In this context, and against this backdrop, the Appellant had earlier filed an application being IA No. 433 of 2016, the prayer wherein was to seek liberty to raise and argue on additional grounds in the context of the decision rendered on the Review Petition. The said IA No. 433 of 2016 was disposed of by the previous bench by order dated 07.03.2018. It appears that inadvertently in the proceedings it was reflected that the prayer thus made was for filing additional documents. The error having been brought to our notice, we rectify the Order dated 07.03.2018 which shall be read instead as granting liberty to raise additional grounds.

It is the submission of the Applicant that when the Appeal came up for hearing it was felt that the Review Petition having since been disposed of by the Central Commission, the Appeal must raise all the grounds comprehensively and, taking cue from this, the present application has been filed seeking amendment of the Memorandum of Appeal. The 3rd and 4th Respondents have filed response in the form of Written Submissions. The counsel for the 2nd Respondent adopted the arguments of the said set of Respondents, the other Respondents not participating in the hearing today.

The Application is resisted by the above mentioned Respondents primarily on the technical ground that hearing has commenced on the main Appeal, and, therefore, it is inappropriate for the amendment of memo of appeal to be allowed in view of the proviso to Rule 17 of Order 6 of Code of Civil Procedure, 1908 (CPC) .

The above submissions cannot be accepted, the argument being wholly devoid of substance. There is nothing in the previous proceedings recorded on this appeal to indicate the hearing to have commenced in the matter. The other objections raised by the Respondent concern the merits of the grounds which are sought to be raised additionally. At this stage of the matter, we ought not pass any comment thereupon. As was submitted by the counsel for the Applicant, the amendment sought may be allowed “subject to such exceptions”.

In our view, the Application would serve a meaningful purpose by bringing in as comprehensive package all grounds of appeal concerning the order of the Central Commission which is under challenge. The Respondents will have the opportunity to respond to the additional averments and the grounds taken in the appeal by submitting their additional reply, if so required.

IA No. 195 of 2019, thus, is allowed. The amended Memo of Appeal shall be taken on board and placed on top of the file.

The Respondents may file fresh response to the amended memorandum of Appeal within eight weeks, as is sought.

List the matter on **05.02.2020.**

Justice R.K. GAUBA
Judicial Member

Ravindra Kumar Verma
Technical Member(Electricity)

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