

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 217 OF 2025 & IA No. 811 OF 2025 & IA No. 969 OF 2025

Dated: 28th August, 2025

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Rajasthan Urja Vikas and IT Services Limited (Formerly
known as Rajasthan Urja Vikas Nigam Limited) & Ors. Appellant(s)

Versus

DB Power Limited & Ors. Respondent(s)

Counsel on record for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Amal Nair
Shivani Verma
Devyani Prasad
for App. 1

Anand K. Ganesan
Swapna Seshadri
Amal Nair
Shivani Verma
Devyani Prasad
for App. 2

Anand K. Ganesan
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Anand K. Ganesan
Swapna Seshadri
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Counsel on record for the Respondent(s) : Deepak Khurana
Vineet Tayal
Abhishek Bansal
Nishtha Wadhwa
Bhaskar
Monalika Chaudhary
for Res. 1

Ravi Kishore
Niraj Singh
Purna Singh
Keshav Singh for Res. 3

ORDER

IA-811/2025 & IA-969/2025
(For Interim relief)

The 1st Respondent herein had earlier filed Petition No. 63/MP/2019, under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003, before the CERC seeking recovery of Capacity Charges/Compensation under the Power Purchase Agreements both dated 01.11.2013. By its order, in Petition No. 63/MP/2019 dated 15.01.2020, the CERC had directed the 1st Respondent herein to calculate and claim the compensation in the terms of capacity charges for 61 MW (311 MW–250 MW) for the period from 30.11.2016 to 31.07.2018 after off-setting the capacity charges, if any, earned on the said capacity during the relevant period. The 1st Respondent herein was directed to share all relevant documents including calculation with the Appellant herein while claiming compensation.

Pursuant to the afore-said order of the CERC dated 15.01.2020, the 1st Respondent herein raised an invoice on the Appellant herein on 16.01.2020 for Rs. 230.89 Crores. The Appellant made payment of Rs. 115,29,44,689/- on 04.03.2022; Rs. 57,64,72,344/- on 29.06.2022; Rs. 28,82,36,172/- on 13.07.2023, and the balance Rs. 4,66,80,345/- in three tranches, the first of Rs. 167,61,311/- on 06.11.2023, the second of Rs. 1,52,76,831/- on 13.12.2023 and the third of Rs. 1,46,42,201/- on 12.02.2024 after adjusting Rs.23.16 Crores. In short, the Appellant paid the 1st Respondent the principal sum of around Rs. 207 Crores as against the 1st Respondent's claim of Rs. 230.89 Crores.

On the ground that the said amount was paid to them belatedly, the 1st Respondent herein filed Petition No. 237/MP/2023 before the CERC,

under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003, seeking recovery of Late Payment Surcharge, under the Power Purchase Agreements both dated 01.11.2013, for non-payment as also for belated payment of capacity charges and carrying costs. The Appellant herein contended before the CERC that the claim of the 1st Respondent was barred by the principles of res judicata.

While rejecting this contention urged on behalf of the Appellant, the CERC directed them, by its order in Petition No. 237/MP/2023 dated 19.03.2025, to pay the outstanding liability towards LPS calculated for the period beyond the due date of the said invoice till payment of the entire principal amount (duly adjusting the credit notes generated by the 1st Respondent herein based on reconciliation) within 60 days of the order. With respect to the 1st Respondent's claim for carrying cost, for the period November, 2016 to January, 2020 along with LPS, the CERC observed that, in terms of the earlier order dated 15.01.2020, the 1st Respondent-generator was entitled to claim compensation in terms of the capacity charges for 61 MW capacity for the period from 30.11.2016 to 31.07.2018 after off-setting capacity charges, if any, earned on the said capacity during the relevant period; on the basis of the judgment of the Supreme Court dated 25.04.2018, and such finding not being premised on any expressed economic restitution principles, they did not consider it appropriate to grant carrying cost to the 1st Respondent as prayed for. In short, the 1st Respondent herein was denied carrying cost for the period from November, 2016 till 15.01.2020 ie for both the pre-trial period and pendent lite. We are informed that the 1st Respondent has filed Appeal No. 149 of 2025, aggrieved by the denial of carrying cost for this period, and the said appeal is pending adjudication before this Tribunal.

We are concerned, in the present Appeal, only with the direction of the CERC whereby the Appellant is required to pay carrying cost at LPS

rates for belated payment of the invoice raised by the 1st Respondent in terms of the order of the CERC dated 15.01.2020 which is with respect to payment of carrying cost for the period subsequent to the decree. By way of the present IA, the Appellant seeks stay of the impugned order of the CERC in Petition No. 237/MP/2023 dated 19.03.2025. We had passed an ex-parte ad-interim order, on 17.06.2025, on condition that the Appellant paid Rs. 30 Crore out of the estimated amount of Rs.95 Crore liable to be paid in terms of the impugned order of the CERC dated 19.03.2025.

TESTS TO BE SATISFIED FOR GRANT OF INTERIM RELIEF:

The grant or refusal of interlocutory relief is covered by three well established principles viz., (1) whether the Appellant has made out a prima facie case, (2) whether the balance of convenience is in their favour i.e., whether it would cause greater inconvenience to them if interim relief is not granted than the inconvenience which the opposite party would be put to if it is granted, and (3) whether the Appellant would suffer irreparable injury. With the first condition as a sine quo non, at least two conditions should be satisfied by the Appellant conjunctively, and a mere proof of fulfilment of one of the three conditions does not entitle them to the grant of interlocutory relief in their favour. (**Nawab Mir Barkat Ali Khan v. Nawab Zulfikar Jah Bahadur, AIR 1975 AP 187; Gone Rajamma v. Chennamaneni Mohan Rao, (2010) 3 ALD 175; Kishoresinh Ratansinh Jadeja v. Maruti Corpn, (2009) 11 SCC 229; Best Sellers Retail (India) Private Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792; State of Mizoram v. Pooja Fortune Private Limited, 2019 SCC OnLine SC 1741**).

PRIMA FACIE CASE:

The first of the three tests, to be satisfied for the grant of interlocutory relief, is whether the Appellant has made out a prima facie

case. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were to be believed. While determining whether a prima facie case had been made out or not, the relevant consideration is whether, on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. **(Nirmala J. Jhala v. State of Gujarat, (2013) 4 SCC 301; Vidya Drolia v. Durga Trading Corporation - (2021) 2 SCC 1)**. The burden is on the Appellant by evidence aliunde, by affidavit or otherwise, to show that there is “a prima facie case” in its favour which needs adjudication. Prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. **(Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276; Mahadeo Savlaram Shelke v. Puna Municipal Corporation, (1995) 3 SCC 33)**.

For the purpose of determining whether or not a prima facie case has been made out, this Tribunal should satisfy itself that the averments in the interlocutory application, if taken to be true, is a possible view, and that it raises substantial questions which needs investigation, and a decision on merits. A finding on “prima facie case” would be a finding of fact. While arriving at such a finding of fact, the court must arrive at a conclusion that a case for trial has been made out **(M. Gurudas v. Rasaranjan, (2006) 8 SCC 367)**. A prima facie case means a case which can be said to be established if the evidence which is led in support of the same were believed. The probability of the Appellant’s success must be comparatively higher **(Gujarat Electricity Board v. Maheshkumar & Co., 1982 SCC OnLine Guj 29)**.

Mr. Anand K. Ganesan, Learned Counsel for the Appellant would place reliance on the judgment of the Supreme Court, in **Greater Cochin Development Authority Vs. Leelamma Valson and Others (2002) 2 SCC 573**, in support of his submission that, since the order passed by

the CERC in Petition No. 63/MP/2019 dated 15.01.2020 did not direct payment of interest post decree though specifically prayed for, the 1st Respondent herein would not be entitled for any interest thereon. Learned Counsel would also place reliance on Section 34(2) of the Civil Procedure Code in this regard. On the other hand, Mr. Deepak Khurana, Learned Counsel for the 1st Respondent, would rely on the impugned order to contend that failure of the Appellant to promptly pay the amount, in terms of the order of the CERC in Petition No.63/MP/2019 dated 15.01.2020, despite the 1st Respondent having raised an invoice on them on 16.01.2020; and the delay in making payment, for periods ranging between two to three and half years, would justify their being paid carrying cost/interest.

We are of the view that the rival submissions in this regard must await adjudication of the main appeal. We shall, for the purposes of adjudication of the present IA, proceed on the premise that the Appellant has made out a prima facie case for grant of interim relief.

Even if we were to proceed on the basis that the Appellant has made out a prima facie case for grant interim relief, the Appellant must, nonetheless, satisfy one of the other two tests of balance of convenience and irreparable injury.

THE TEST OF BALANCE OF CONVENIENCE:

The “balance of convenience” must be in favour of granting interim relief. The Court/Tribunal, while granting or refusing to grant interlocutory relief, should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if interim relief is refused, and compare it with that which is likely to be caused to the other side if the interim relief is granted. If, on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the Appeal, status quo should be maintained, interim relief would be granted. (**Dalpat Kumar v. Prahlad**

Singh, (1992) 1 SCC 719 : AIR 1993 SC 276). The Court/Tribunal must satisfy itself that the comparative hardship or mischief or inconvenience which is likely to occur from withholding grant of interim relief will be greater than that would be likely to arise from granting it (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276).**

The prayer for grant of interlocutory relief is at a stage when the existence of the legal right asserted by the Appellant, and its alleged violation, are both contested and uncertain and remains uncertain till they are examined during the final hearing of the main appeal. The court/tribunal, at this stage, acts on certain well-settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1; Gujarat Bottling Co. Ltd. v. Coca Cola Co, (1995) 5 SCC 545).** The basic principle of the grant of an interlocutory order is to assess the right and need of the Appellant, as against that of the Respondent, and it is a duty incumbent on to the law courts/tribunals to determine as to where the balance lies. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1).** The court/tribunal also, in restraining the Respondent from exercising what it considers to be its legal right but what the Appellant would like to be prevented, puts into the scales, as a relevant consideration, where the balance of convenience lies. (**Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., (1999) 7 SCC 1).**

On the balance of convenience test, suffice it to observe that accepting the submission urged on behalf of the Appellant, that irrespective of when they make payment, in terms of the order of the CERC dated 15.01.2020, the Appellant would not be liable to pay interest on such belated payment, would mean that, even if the Appellant had chosen not to comply with the order passed by the CERC, (in Petition No. 63/MP/2019 dated 15.01.2020 despite an invoice being raised on them on 16.01.2020), even for a period of say a decade or two,

they would still not be liable to pay carrying cost/interest for such unduly belated payment. We find it difficult, prima facie, to accept such a submission, that too at the interlocutory stage of these appellate proceedings.

What is not in dispute is that the 1st Respondent had, in fact, raised an invoice on 16.01.2020, and that the Appellant had made payment, pursuant to the said invoice and in terms of the order of the CERC dated 15.01.2020, in instalments that too only from 04.03.2022 till November, 2023. As the CERC has only directed them to pay carrying cost/ interest for such belated payment, we are of the view that the balance of convenience would certainly lie in favour of the 1st Respondent and against the Appellant herein.

As we are satisfied that the balance of convenience lies in favour of the 1st Respondent, we are required to now consider whether the Appellant has satisfied the other test of their suffering irreparable injury if an interim order is not passed in their favour. It is relevant to note that the Appellant has already paid Rs.30 Crores, as against their own estimated liability of around Rs.95 Crores, in terms of our earlier order dated 17.06.2025, leaving a balance of around Rs. 65 Crores still to be paid in terms of the impugned order.

THE IRREPAIRABLE INJURY TEST:

As the grant of interim relief is discretionary, exercise thereof is subject to the court/tribunal satisfying itself that its interference is necessary to protect the party from the species of injury. In other words, irreparable injury would ensue before the legal right would be established at the trial (**Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719 : AIR 1993 SC 276**). Irreparable injury does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages (**Dalpat Kumar v. Prahlad**

Singh, (1992) 1 SCC 719 : AIR 1993 SC 276; Mahadeo Savlaram Shelke v. Puna Municipal Corporation, (1995) 3 SCC 33.

Mr. Deepak Khurana, Learned Counsel for the 1st Respondent would submit that compliance with the impugned order, pending adjudication of the main appeal, would require the Appellant to pay the 1st Respondent herein a sum of Rs 95 crores which they can always recover from the 1st Respondent in case of their success in the main appeal later; bearing in mind the possibility of the Appellant's success in the main Appeal, however remote it may be, the Appellant's interest for recovery of the afore-said sum is adequately safeguarded since, at any given point of time, the amount due and payable by the Appellant to the 1st Respondent, for supply of energy for a period of two months, is always pending; the monthly bill raised by the 1st Respondent on the Appellant, for supply of energy, is, on an average, around Rs.75 Crores; and the 1st Respondent has no objection to the Appellant recovering this sum of Rs.95 Crores, from their monthly bills, in case the 1st Respondent, in any given month, stops supply of electricity to the Appellant.

In the light of the assurance given on behalf of the 1st Respondent, it is clear that the Appellant's interests, pending adjudication of the main appeal, is sufficiently secured, and they will not suffer irreparable injury in case the interim relief sought by them is not granted in their favour.

We see no reason, in such circumstances, to pass any order injuncting the directions given by the CERC in the impugned order. Suffice it make it clear that compliance, with the impugned order passed by the CERC, by the Appellant herein shall be subject to the result of the main appeal. Needles to state that, in case of their success in the main appeal, the order now passed by us shall not disable the Appellant from seeking restitution for the payment made by them both in terms of

impugned order passed by the CERC and the earlier interim order passed by this Tribunal on 17.06.2025.

Mr. Anand K. Ganesan, Learned Counsel for the Appellant seeks four weeks' time from today to make payment of the amounts due and payable in terms of the impugned order. Time, as sought for, is granted. The trigger date shall stand extended for a period of five weeks from today to enable the Appellant, in the meanwhile, to make payment within the time sought on their behalf by Mr. Anand K. Ganesan, Learned Counsel. The IAs are, accordingly, disposed of

APL No. 217 OF 2025

Learned Counsel on both sides state that the issue involved in the Appeal is short. Let the appeal be included in the 'List of Short Matters, to be taken up from there in its turn.

Seema Gupta
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

mk/dk