

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

EP No. 10 OF 2025

Dated: 9th February, 2026

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Tata Power Delhi Distribution Ltd. Petitioner(s)

Versus

Delhi Electricity Regulatory Commission Respondent(s)

Counsel on record for the Petitioner(s) : Amit Kapur
Anupam Varma
Rahul Kinra
Aditya Gupta
Girdhar Gopal Khattar
Adamyia Ojha
Yash Srivastava
Aditya Ajay for App. 1

Counsel on record for the Respondent(s) : Dhananjay Baijal for Res. 1

ORDER

This EP is filed seeking execution of the judgment and decree passed by this Tribunal in Appeal No. 33 of 2020 dated 10.02.2025. In the said judgment, this Tribunal observed at Para 25 and 29 as under:

“25. We note at the cost of repetition that as per Regulation 6.32 of 2011 DERC Regulations, the depreciation has to be calculated annually, based on the straight line method, over the useful life of the assets. In the instant case, the Commission has itself stated specifically in the order dated 31st August, 2017 that useful life of Rithala CCPP is 15 years as certified by various agencies appointed by the Appellant. It has further proceeded to

work out the capital cost of the said plant as 197.70 crores after applying correction factor prorated for 15 years useful life of the plant. The mere fact that the plant has been used for only six years does not mean that its useful life has to be restricted to only six years while calculating depreciation. We concur with the arguments advanced on behalf of the Appellant that in case the useful life of the plant is taken as six years only, the recovery of capital cost by way of depreciation should also be allowed within the same period of time. It would be incongruous to say that recovery of capital cost by way of depreciation is permissible only for a period of six years when the capital cost was worked out while considering the useful life of the plant as 15 years. Since the useful life of the plant has been taken to be 15 years by the Commission itself in the order dated 31st August, 2017, the recovery of the capital cost by way of depreciation should also be spread over for a period of 15 years.

29. For the aforesaid reasons, the impugned order dated 11th November, 2019 is hereby set aside. The case is remanded back to the Commission with the direction to allow the recovery of entire capital cost of the Appellant's power plant at Rithala by way of depreciation over its useful life of 15 years. The Appeal stands allowed to the said extent."

This Execution Petition is filed alleging non-compliance of the afore-said judgment and decree in Appeal No. 33 of 2020 dated 10.02.2025, and a direction is sought to the Respondent Commission to implement and comply with this Tribunal's direction in the said Judgment in letter and spirit, and to allow the claim of the Petitioner with carrying cost in a time bound manner. The aforesaid judgment of this Tribunal continues to remain in force even as on date and, consequently, the

Petitioner herein (which is the Appellant in Appeal No. 33 of 2020) is entitled in law to have the decree executed.

As noted hereinabove, the decretal part of the judgment required the Commission, on the case being remanded to it, to allow recovery of the entire capital cost of the Execution Petitioner's power plant at Rithala by way of depreciation over its useful life of 15 years. The Petitioner's complaint is that, though one year has elapsed, the Respondent Commission has still not complied with the judgement and decree by passing an order consequent on remand, as a result of which the Petitioner was constrained to file the present Execution Petition.

Section 120(3) of the Electricity Act stipulates that an order made by the Appellate Tribunal under the Electricity Act shall be executable by the Appellate Tribunal as a decree of the civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court. It is settled law that an executing court has the jurisdiction, conferred by Section 47 CPC, to decide all questions relating to execution, discharge and satisfaction of the decree, but it has no jurisdiction over any other matter, and cannot enforce any other liability. It is concerned only with enforcing the decretal liability and not any other. **(Maharaj Kumar Mahmud Hasan Khan v. Moti Lal Banker: AIR 1961 All 1 (FB) : 1960 SCC OnLine All 89)**. If a decree-holder wants to enforce a liability other than the judgment-debtor's decretal liability, it would strictly not be a question of execution of the decree, and will not be within the jurisdiction of the executing court. **(Maharaj Kumar Mahmud Hasan Khan v. Moti Lal Banker : AIR 1961 All 1 (FB) : 1960 SCC OnLine All 89)**. The entire purpose of execution proceedings is to enforce the directions passed in the decree **(Firm Rajasthan Udyog v. Hindustan Engineering and Industries Ltd. (2020) 6 SCC 660)**.

An executing Court cannot go behind the decree. (**Sunder Dass vs Ram Prakash: AIR 1977 SC 1201 :1977 2 SCC 662; Jai Narain Ram Lundia vs Kedar Nath Khetan And Others: AIR 1956 SC 359:1956 SCR 62**). The decree must either be executed as it stands in one of the ways permitted by law or not at all, unless the Court which passed it alters or modifies it. (**Jai Narain Ram Lundia vs Kedar Nath Khetan And Others: AIR 1956 SC 359:1956 SCR 62**). A Court executing a decree can neither add to such a decree nor vary its terms. (**Muhammad Sulaiman v. Jhukki Lal [I.L.R. XI All. 228; Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker: AIR 1961 All 1(FB): 1960 SCC ONLINE All 89**). The duty of an executing court is to execute the decree as it finds it. It has no jurisdiction to alter or vary it, and to execute it as it would stand after the alteration or variance. (**Gobardhan's case [A.I.R. 1932 All. 273: 1932 A.L.J. 365 (F.B.): I.L.R. 54 All. 573; Maharaj Kumar Mahmud Hasan Khan vs Moti Lal Banker: AIR 1961 All 1(FB): 1960 SCC OnLine All 89**). It is also not open to the Executing Court to add to a decree of which execution is sought, or to travel behind the decree to add or modify the directions contained therein. (**J&K Bank Ltd. v. Jagdish C. Gupta, (2004) 10 SCC 568; Gurdev Singh v. Narain Singh, (2007) 14 SCC 173**). The entire purpose of execution proceedings is to enforce the directions passed in the decree (**Firm Rajasthan Udyog & Ors.v. Hindustan Engineering and Industries Ltd. (2020) 6 SCC 660**).

Any question, that does not relate to the execution of the decree, is not within the jurisdiction of the executing court. The entire purpose of execution proceedings is to enforce the directions passed in the decree, and nothing more. As the executing court, while executing the decree, is only concerned with the execution part of it and nothing else, the court should take the judgment at its face value. (**Meenakshi Saxena v. ECGC Ltd., (2018) 7 SCC 479**).

The obligation cast on this Tribunal, on its' jurisdiction under Section 120(3) of the Electricity Act being invoked, is to execute the decree as it is ie the decree in Appeal No. 33 of 2020 dated 10.02.2025.

In justification of the inaction of the DERC in complying with the afore-said judgement and decree, Mr. Dhananjay Baijal, Learned Counsel for the Respondent Commission, would draw our attention to the letter addressed by the Petitioner-Appellant to the Respondent Commission on 17.02.2025, whereby they requested the Commission to consider implementation of the aforesaid Judgment dated 10.02.2025, in its tariff exercise for the ongoing true up of past years and ARR for FY 2025-26, stating that the said approach would ensure that any unwarranted carrying costs were not fastened on Tata Power Delhi Distribution Limited's consumers for any delay in implementation of this Tribunal's directions. The submission of Mr. Dhananjay Baijal, Learned Counsel for DERC, in short, is that, while the direction issued in the appellate judgment of this Tribunal was to allow recovery of the entire capital cost of the power plant i.e. of the generating unit, what the Petitioner-Appellant had sought, by way of the letter dated 17.02.2025, is to provide for recovery of the capital costs in the distribution tariff of the Petitioner.

On the other hand, Mr. Amit Kapur, Learned Counsel for the Petitioner- Appellant, would submit that the Execution Petition is filed by the very same entity in whose favour a decree was passed by this Tribunal.

It is un-necessary for us to delve into the contents of the letter dated 17.02.2025, for what the Respondent-DERC has left un-answered is why they have failed to comply with the judgment and decree passed by this Tribunal in Appeal No. 33 of 2020 dated 10.02.2025. The DERC is a body subordinate to this Tribunal, and is bound to comply with the

appellate directions issued by this Tribunal. It is impermissible for the Commission to avoid compliance with the appellate directions issued by this Tribunal on the specious plea that the Petitioner's request in their letter dated 17.02.2025 is unjustified. If the Respondent- Commission was of the view that compliance with the judgment of this Tribunal could not be done in the mode and manner sought by the Petitioner- Appellant in its letter dated 17.02.2025, they ought to have complied with the said Judgement and decree in the mode and manner which the Commission considered to be in accordance with law, and in terms of the judgement and decree in Appeal No. 33 of 2020 dated 10.02.2025. The Respondent-Commission was wholly unjustified in failing to comply with the afore-said order of this Tribunal for the past one year.

We must, however, bear in mind that Section 120(3) of the Electricity Act confers on this Tribunal, for the purpose of execution, all the powers of a civil court. The powers of execution conferred on a Civil Court are in terms of Section 51 of the Civil Procedure Code. Instead of seeking execution in terms of Section 51 CPC, the Petitioner- Appellant has, while alleging non-compliance of the decree passed by this Tribunal in Appeal No. 33 of 2020 dated 10.02.2025, again sought the very same directions as was issued by this Tribunal in the decree, execution of which is sought in the present Execution Proceedings. Re-iterating the very same directions would serve no useful purpose when the Respondent-Commission has failed to comply with the said directions issued earlier in Appeal No. 33 of 2020 dated 10.02.2025. It is only if the Petitioner had invoked the powers of execution, in terms of Section 51 of the Civil Procedure Code, would this Tribunal be justified, in the exercise of its jurisdiction under Section 120(3) of the Electricity Act, in suitably executing the decree in Appeal No. 33 of 2020 dated 10.02.2025.

While expressing our inability to grant the relief, as sought for in this EP, we grant the Petitioner liberty, if they so choose, to file an EP afresh in terms of Section 51 of the CPC. Subject to the aforesaid observations, the present EP fails and is accordingly dismissed.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

tpd/kns