IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

COURT-1

IA NO. 1641 OF 2022 IN
APPEAL NO. 399 OF 2022 & IA NO. 381 OF 2023

Dated : 31.03.2023

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

M/s Avaada Energy Private Limited & Anr. …. Appellant(s)

Versus

Central Electricity Regulatory Commission & Ors. …. Respondent(s)

Counsel for the Appellant(s) : Buddy Ranganadhan
Deepak Khurana

Counsel for the Respondent(s) : Suparna Srivastava
Tushar Mathur
Astha Jain for R-2

ORDER

IA NO.381 OF 2023

[For amendment of the memo of Appeal]

By way of this IA, the Appellant seeks to raise additional grounds, relying on the Electricity (Transmission System Planning, Development and Recovery of Inter-State Transmission Charges), Rules 2021, notified in the Gazette of India dated 01.10.2021, for claiming exemption from payment of transmission charges for the period from February to May 2022. Reliance is placed by Mr. Buddy A. Ranganadhan, learned Counsel for the Appellant, on Rule 5(12) of the said Rules which enables the Central Government, if it is satisfied, to waive inter-state transmission charges and losses, for the notified source of energy, for a specified duration.

While Mr. Buddy A. Ranganadhan, learned Counsel for the Appellant, may be justified in his submission that Statutory Rules, once notified in the Gazette, must be presumed to be in public knowledge, all that Rule 5(12) enables is for the Central Government to pass an order waiving inter-state transmission system charges. The orders passed, in the exercise of the powers conferred by Rule 5(12), cannot be elevated to the status of a Statutory Rule, for they are merely orders passed in the exercise of the

powers conferred by the Rules, and do not per se form part of the Rules. The orders, on which reliance is placed by the learned Counsel, are the proceedings of the Ministry of Power, Government of India dated 23.11.2021 as amended by the subsequent order dated 30.11.2021. Neither of these orders were brought to the notice of the Commission and are sought to be introduced for the first time at the appellate stage. The additional grounds of challenge sought to be raised are, in turn, dependent on these two orders dated 23.11.2021 and 30.11.2021 being brought on record.

It is only if any one of the requirements, of clauses (a), (aa) and (b) of Order 41 Rule 27 of the Code of Civil Procedure, 1908, are satisfied, can these documents be permitted to be brought on record for the first time in appellate proceedings. The affidavit filed in support of the IA is silent on the applicability of Order 41 Rule 27, and makes no mention of any of the clauses under which the aforesaid documents would fall.

On expressing our disinclination to entertain this IA, Mr. Buddy A. Ranganadhan, learned Counsel for the Appellant, seeks liberty to withdraw this IA and file a fresh IA complying with the mandate of Order 41 Rule 27. We see no reason to deny him such an opportunity. The Appellant is permitted to withdraw the IA with liberty to file an IA afresh.

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Ms. Suparna Srivastava, learned Counsel for the 2nd Respondent, seeks four weeks' time to file reply in the main Appeal, which is granted. Rejoinder, if any, may be filed within three weeks thereafter. Registry to verify whether pleadings are complete, and thereafter let this Appeal be included in the 'List of Finals' to be taken up from there, in its turn.

(Sandesh Kumar Sharma)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

vt/tp/ks