

ITEM NO.16

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.974/2023

UTTAR PRADESH POWER CORPORATION LIMITED

Appellant(s)

VERSUS

M/S SAHASRADHARA ENERGY PRIVATE LIMITED & ORS.

Respondent(s)

(With IA No.32181/2023-EX-PARTE STAY and IA No.32184/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH C.A. No.1235/2023 (XVII)

(With IA No.36084/2023-EX-PARTE STAY and IA No.36088/2023-EXEMPTION FROM FILING O.T. and IA No.36091/2023-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 27-02-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s)

Mr. S. S. Shroff, AOR

CA 1235/2023

Mr. Parag Tripathi, Sr. Adv.
Mr. Md. Altaf Mansoor, Adv.
Mr. Goutham Shivshankar, AOR
Mr. Shantanu Singh, Adv.
Mr. Ravi Sehgal, Adv.

For Respondent(s)

Mr. Nikunj Dayal, AOR
Ms. Swapna Seshadri, Adv.

Mr. Anand K. Ganesan, Adv.
Mr. Pramod Dayal, Adv.

CA 1235/2023

Mr. Mukul Rohatgi, Sr. Adv.
Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Amit Kapur, Adv.
Mr. Akshat Jain, Adv.
Mr. Arshit Anand, Adv.
Mr. Shashwat Singh, Adv.
Mr. Avdesh Mandloi, Adv.
Mr. Rajesh Kumar, Adv.
Mr. E.C. Agrawala, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

Civil Appeal No 974 of 2023

- 1 Issue notice, returnable in three weeks.
- 2 Mr Nikunj Dayal, counsel appears on behalf of respondent on caveat and waives service.
- 3 The respondent shall file its counter affidavit in the meantime.
- 4 List the Civil Appeal on 24 March 2023.

Civil Appeal No 1235 of 2023

- 1 We have heard Mr Parag P Tripathi, senior counsel appearing on behalf of the appellant and Mr Mukul Rohatgi and Mr K V Viswanathan, senior counsel for the respondent.
- 2 Admit.

- 3 On the question of interim relief, in a letter dated 17 February 2023, addressed by the Chief Engineer (PPA) of the appellant to the respondent, it has been stated as follows:

“Kindly refer to invoices raised by you on PRAAPTI Portal against differential amount of new rate (Rs.7.02/Kwh) and old rate (Rs.5.07/Kwh) for period May-19 to Oct-22 amounting to Rs.63,07,65,155/- (Invoice No.JHANSI/50MW/UPPCL/2022-23/DIFFERENTIAL TARIFF dated 02.12.2022). Further bill of LPS applicable on differential amount has also been raised amounting to Rs.18,75,37,390/- (Invoice No.JHANSI/50MW/UPPCL/2022-23/LPS dated 02.12.2022). The trigger date of both these invoices is 17.02.2023.

Based on discussions with your Company on 17.02.2023, wherein it was agreed that although an appeal of UPPCL, is filed in Hon'ble Supreme Court w.r.t. APTEL order dated 28.11.2022 and pending a final decision in the matter, the payment against both the above referred invoices amounting to Rs.81.83 crore will be paid as per the following time schedule; 1st instalment of Rs.21 crore on 17/02/2023 and the balance in three equal monthly instalments in the months of March 2023, April 2023 & May 2023.”

- 4 In pursuance of the above communication, the Court is informed that a payment of Rs 21 crores representing the first installment has been made to the respondent on 17 February 2023. In view of the commitment which was made on 17 February 2023, there shall be no stay in respect of the balance which is payable in three equal monthly installments in the months of March, April and May 2023 in terms of the communication which is set out above.
- 5 However, in respect of future payments against the invoices which may be raised by the respondent, we order and direct that the appellant shall presently pay at the old rate of 5.07/Kwh. The appellant shall make a provision in its own accounts representing the differential between the rate of Rs 7.02/kwh which has been accepted by Appellate Tribunal for Electricity in its impugned order and the rate of 5.07/Kwh which was fixed by the Uttar

Pradesh Electricity Regulatory Commission. Payment of the differential shall stand stayed.

- 6 The above arrangement shall abide by the final result of the appeal.
- 7 List the Civil Appeal in the third week of August 2023 for hearing and final disposal.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar