

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 5615 of 2023

M/s Adani Green Energy (Uttar Pradesh) Ltd

... Appellant

Versus

M/s Sukhbir Agro Energy Ltd & Ors

... Respondents

ORDER

- 1 The appeal arises from an order dated 1 August 2023 of Appellate Tribunal for Electricity¹ in IA No 2225 of 2022 in Appeal No 88 of 2018.
- 2 It is common ground that the IA which was filed by the appellant before APTEL was for impleadment in Appeal No 88 of 2018. The Tribunal has declined the prayer for impleadment.
- 3 The appellant instituted Appeal No 307 of 2018 before APTEL, aggrieved by an order dated 12 February 2018 passed by the State Commission. The reliefs which were sought by the appellant were as follows :

"(a) Allow the Appeal and set-aside the impugned Order dated 12.02.2018 in P. No. 1110/2016, in so far as the State Commission has wrongly prescribed the tariff of Rs. 5.07/kWh, instead of the discovered tariff under competitive bidding under Section 63 of the Act, i.e. Rs. 8.44/kWh;

If this Hon'ble Tribunal were pleased not to grant prayer (a), then this Hon'ble Tribunal may be pleased to consider prayer (b);

1 "APTEL"

(b) Grant the tariff of Rs. 7.02/kWh as in the case of other 9 bidders to maintain parity as per the interim order dated 21.11.2017 in P. No. 1110/2016 under the same bidding process.”

- 4 During the course of the hearing, the Tribunal recorded the submission of the appellant in paragraph 38 of its judgment dated 28 November 2022 (Annexure A-9 to the Paper Book) in the following terms :

“38. As noted in the early part of this judgment, the larger issue of the scope of intervention with the bid discovered price in proceedings under section 63 of Electricity Act concerns the interim orders earlier passed by the State Commission on 22.02.2017 and 21.11.2017. Though the appellants in the matters at hand also raise such issues, presently they press only for parity with the nine bidders who are beneficiary of the order dated 21.11.2017, they having reserved the right to seek proper parity on the basis of the bid quoted price should the challenge to the order dated 21.11.2017 by the said nine bidders, it being subject matter of other pending appeals, succeed.”

- 5 Against the order which has been passed by APTEL in Appeal No 307 of 2018, an appeal is pending before this Court, namely CA No 1235 of 2023.
- 6 The appellant sought impleadment in Appeal No 88 of 2018 which has been filed by the first respondent. The Tribunal declined the prayer for impleadment.
- 7 While issuing notice in these proceedings on 1 September 2023, this Court recorded the submissions of the appellant, thus :

“2 Mr Mukul Rohatgi, senior counsel appearing on behalf of the appellant relies on paragraph 48 of the order dated 28 November 2022 of the Appellate Tribunal for Electricity in Appeal No 307 of 2018 filed by the appellant which reads as follows:

“For the foregoing reasons, and in the

circumstances, these appeals must succeed. Subject to their claim for bid quoted price on the basis of arguments vis-a-vis contours of the jurisdiction of regulatory Commission under section 63 of Electricity Act, contingent upon the result of pending appeals challenging the order dated 21.11.2017, we hold that the appellants herein are entitled to seek parity and, thus, must be allowed the negotiated tariff of Rs.7.02/kWh as applied to the nine other bidders which had participated in and selected by the same competitive bidding process.”

- 3 On the basis of paragraph 48, it has been submitted that the claim of the appellant to obtain the bid quoted price of Rs 8.444/kWh is contingent on other appeals which are pending before the Appellate Tribunal for Electricity. Hence, it is urged that it was in this backdrop that the appellant sought intervention in those appeals.”

- 8 As the above submission indicates, the appellant sought impleadment in Appeal No 88 of 2018 which is pending before APTEL at the behest of the first respondent on the ground that in its order dated 28 November 2022, the Tribunal had specifically observed that the claim of the appellants to seek parity is contingent upon the result of the pending appeals challenging the order dated 21 July 2017.
- 9 Learned counsel appearing on behalf of the first respondent has submitted that the appeal which has been filed by the first respondent has been substantially heard and arguments of the first respondent have been concluded. The appeal is now stated to be listed on 3 October 2023 for hearing the submissions of the respondents to the appeal. The counsel submitted that the appellants having themselves sought parity, as noted above, it is not open to them to seek impleadment in the appeal which was filed by the first respondent. However, the

counsel fairly stated that she has no objection if the appellants are heard purely on the question of law.

- 10 Mr Mukul Rohatgi, senior counsel appearing on behalf of the appellant submits that the appellant does not intend to urge any submission contrary to what has been urged by the first respondent in Appeal No 88 of 2018 and would, in fact seek to support the appellant in that appeal on questions of law.
- 11 Bearing in mind the fact that the outcome of Appeal No 88 of 2018 would bear upon the claim of the appellant, we are of the considered view that the following order would meet the ends of justice :
- (i) The request made by the appellant for impleadment in Appeal No 88 of 2018 shall stand declined;
 - (ii) The appellant is granted liberty to intervene in Appeal No 88 of 2018 by urging such submissions on law as the appellant seeks to urge in support of the appeal which has been filed by the first respondent;
 - (iii) We record the assurance of the senior counsel appearing on behalf of the appellant that the Appellant will confine its arguments to no more than thirty minutes on the questions of law which have been addressed by the first respondent in Appeal No 88 of 2018; and
 - (iv) No adjournment shall be sought by the appellant before the APTEL on 3 October, 2023 which is the date fixed for addressing further arguments in Appeal No 88 of 2018;

- 12 The impugned order of APTEL dismissing the application for impleadment is confirmed and that the application for impleadment would stand rejected. However, the appellant is permitted to address arguments as an intervener in terms of the directions which have been issued above.
- 13 The Appeal is accordingly disposed of.
- 14 Pending applications, if any, stand disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[J B Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
September 25, 2023
GKA

ITEM NO.20

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(s). 5615/2023

M/S ADANI GREEN ENERGY (UTTAR PRADESH) LTD.

Appellant(s)

VERSUS

M/S SUKHBIR AGRO ENERGY LTD. & ORS.

Respondent(s)

(IA No.167107/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.167105/2023-STAY APPLICATION and IA No.167101/2023-PERMISSION TO FILE APPEAL and IA No.167102/2023-APPROPRIATE ORDERS/DIRECTIONS)

Date : 25-09-2023 This appeal was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Arshit Anand, Adv.
Mr. Akshat Jain, Adv.
Ms. Misha Rohatgi, Adv.
Ms. Vidisha Swrup, Adv.
Mr. Avdesh Mandloi, Adv.
Mr. E. C. Agrawala, AOR

For Respondent(s) Ms Garima Prasad, AAG
Mr. Shashank Shekhar Singh AOR
Mr. Abhinav Singh, Adv.

Mr. Shanshank Shekhar Singh, AOR

Mr. Altaf Mansoor, Adv.
Mr. Gautham Shivshankar, AOR

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

1 The appeal is disposed of in terms of the signed order, operative part of which

reads as under :

- “11 Bearing in mind the fact that the outcome of Appeal No 88 of 2018 would bear upon the claim of the appellant, we are of the considered view that the following order would meet the ends of justice :
- (i) The request made by the appellant for impleadment in Appeal No 88 of 2018 shall stand declined;
 - (ii) The appellant is granted liberty to intervene in Appeal No 88 of 2018 by urging such submissions on law as the appellant seeks to urge in support of the appeal which has been filed by the first respondent;
 - (iii) We record the assurance of the senior counsel appearing on behalf of the appellant that the Appellant will confine its arguments to no more than thirty minutes on the questions of law which have been addressed by the first respondent in Appeal No 88 of 2018; and
 - (iv) No adjournment shall be sought by the appellant before the APTEL on 3 October, 2013 which is the date fixed for addressing further arguments in Appeal No 88 of 2018;
- 12 The impugned order of APTEL dismissing the application for impleadment is confirmed and that the application for impleadment would stand rejected. However, the appellant is permitted to address arguments as an intervener in terms of the directions which have been issued above.
- 13 The Appeal is accordingly disposed of.
- 14 Pending applications, if any, stand disposed of.”

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)