

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

I.A. NO.3 OF 2012 IN CIVIL APPEAL NO.7403 OF 2009

CENTRAL COALFIELDS LTD.

Appellant (s)

VERSUS

M/S.DLF POWER LTD.& ANR.

Respondent(s)

(With appln(s) for directions and office report)

Date: 14/09/2012 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE J. CHELAMESWARFor Appellant(s) Mr. Anip Sachthey, AOR
Mr. Mohit Paul, Adv.
Ms. Shagun Matta, Adv.For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.
No.1 Mr. S. Ganesh, Sr. Adv.
Mr. Manu Seshadri, Adv.
for M/s. Dua Associates
Mr. Harish Pandey, AORUPON hearing counsel the Court made the following
O R D E R

I.A. No.3 of 2012, has been filed on behalf of the respondent No.1, DLF Power Limited and Another, inter alia, for a direction upon the appellant to pay 75% of the total dues in terms of the Appellate Tribunal's order dated 31st July, 2009, as an interim payment, on such terms as this Court considers fit. Another prayer has been made to direct the appellant to pay the tariff in terms of the fixation made by the Commission and upheld by the Appellate Tribunal, with effect from 1st April, 2012, pending disposal of the appeal.

Appearing in support of the application, Mr. Mukul Rohatgi, learned senior counsel for the respondent No.1, pointed out that the tariff at the rate of Rs.2.07 per unit, had been fixed as far back as in 2000 on an ad-hoc basis as an interim arrangement. Since the matter has been decided by the Commission and the Appellate Tribunal, the said order has worked itself out and a new tariff on an aggregate for each year has been suggested by the Commission at Rs.3.20 per unit.

Appearing for the appellant, Mr. Anip Sachthey, learned counsel, urged that the tariff being paid by the appellant to the respondent No.1, is in terms of the order passed on 1st April, 2009, in Civil Appeal No.3109 of 2006, and, in any event, the appeal itself is on the list for final hearing. Mr. Sachthey also submits that in the interlocutory application itself, the appellant would like to file its response before any order is passed thereupon.

We have considered the submissions of both the parties and we cannot shut our eyes to the fact that the tariff fixation at the rate of Rs.2.07 per unit, was done as far back as in 2000, which formed the basis of the order passed by this Court on 1st April, 2009. Twelve years is a long time as far as tariff fixation matters are concerned. Even the aggregate of Rs.3.20 per unit, suggested by the Commission, was done as far back as in 2009.

In such circumstances, we are inclined to take note of the submissions made on behalf of the respondents in I.A. No.3 of 2012, in order to do equity to the parties. We are of the view that having regard to the circumstances, some relief is required to be given to the respondent No.1 during the pendency of the appeal.

Apart from the above, we may also take note of the fact that the appellant has been paying the tariff at the old rate, although, there was no stay granted in the instant appeal.

Accordingly, we direct the appellant to pay to the respondent No.1-applicant the tariff as fixed by the Commission and confirmed by the Appellate Tribunal in its order dated 31st July, 2009, after giving due credit to the amounts already paid, within two months from date.

I.A. No.3 of 2012, is disposed of accordingly.

|(Chetan Kumar)
|Court Master

|(Juginder Kaur)
|Assistant Registrar

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