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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EFA(OS) 4/2018

TATA POWER DELHI DISTRIBUTION LTD Appellant
Through Mr. Gaurav Sarin, Mr. Parianay Shah
and Saransh Shaw, Advocates.

versus

DELHI POWER SUPPLY COMPANY & ORS Respondent
Through Mr. S.K. Dubey and Mr. Rajmangal
Kumar, Advocates for R-1 & 2.
Mr. Ravi Gupta, Sr. Advocate with Mr. Arnav
Vidyarthi, Mr. Sachin Jian and Ms. Nupur Kumar,
Advocates for R-3.
Mr. Arnav Vidyarthi and Ms. Nupur Kumar,
Advocates for R-4.
Mr. Gaurav Gupta, Manager (L), DTL/DICL.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **18.04.2018**

C.M. Nos.15010/2018 & 15011/2018

Exemption allowed, subject to all just exceptions.

EFA(OS) 4/2018 & C.M. No.15009/2018 (delay)

As the appeal is delayed, an application for condonation of 111 days has been filed. However, before issuing notice on the said application, we have deemed it appropriate to examine the appeal on merits.

2. The intra-Court appeal impugns order dated 17th November, 2017 passed by the single Judge in EA (OS) No.417/2012 by which the appellant, namely, Tata Power Delhi Distribution Ltd. has

been impleaded as judgment debtor No.5 in Execution Petition No. 47/2004.

3. Execution Petition No.47/2004 has been filed by ECE Industries Ltd. against Delhi Vidyut Board for recovery of Rs.1,40,18,612.84/- along with interest @18% per annum payable in terms of the Award dated 9th April, 2002.

4. Pursuant to Delhi Electricity Reform (Transfer Scheme) Rules, 2001, Delhi Vidyut Board stands unbundled into six companies, namely, Delhi Power Company Limited; generating company namely GenCo; a transmission company namely, Delhi Transco Ltd. and three distribution companies or DISCOMS viz. BSES Rajdhani Power Limited; BSES Yamuna Power Limited and the present appellant-Tata Power Delhi Distribution Limited.

5. Two other DISCOMs, namely, BSES Rajdhani Power Limited and BSES Yamuna Power Limited were earlier impleaded as Judgment Debtor Nos. 3 and 4.

6. The impugned order refers to Rule 8 (3) of the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 and its interpretation given by the Supreme Court in ***North Delhi Power Limited Vs. Government of NCT of Delhi & Ors.***, (2010) 6 SCC 278. The impugned order states that in order to resolve the controversy as to the transformers supplied by the decree holder and to completely and effectively resolve the dispute raised inter se the DISCOMs and by Delhi Transco Ltd., the present appellant should be impleaded as necessary and proper party to the execution proceedings.

6. Counsel for the appellant has drawn our attention to the orders passed in execution petition from time to time and submits that Delhi Transco Limited and the two DISCOMS, namely, BSES Rajdhani Power Limited and BSES Yamuna Power Limited were required to file affidavit etc. It is alleged that there was non-compliance.

7. We are not inclined to go into the said controversy as the issue, whether the appellant is liable or not has to be decided post impleadment of the appellant. This dispute cannot be finally decided at the stage of impleadment itself. Whether there has been non-compliance of orders is an aspect, which the appellant would be entitled to raise before the single Judge and for the other judgment debtors to controvert and deny. We are not required to make any comments in the present appeal. The impugned order also does not make any comments on the said aspect.

8. In view of the aforesaid, we are not inclined to issue notice on the application seeking condonation of delay. Consequently, the application and as a sequitur, the appeal will be treated as dismissed. We clarify that we have not expressed any opinion on merits. It is also clarified that the impugned order does not express any firm and final opinion on merits as well as the liability of the appellant or other judgment debtors. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

APRIL 18, 2018/NA