21.05.2025
Sl No.63
Ct. No.15
Suman

WPA 11213 of 2025

Arjan Dass and Sons Private Limited and Anr.
-vs-
West Bengal Electricity Regulatory Commission & Ors.

Mr. Tanoy Chakraborty
Mr. Chhandak Dutta
.for the petitioners

Mr. Rajarshi Datta
Mr. Prasun Mukherjee
Mr. Deepak Agarwal
...Damodar Valley Corporation

The petitioners made a representation dated May 5, 2025, before respondent no.3 for applying the order dated April 25, 2025, passed by the Appellate Tribunal for Electricity (APTEL), for non-levy of delayed payment surcharge.

In response, Damodar Valley Corporation, respondent no. 2, declined the prayer by an e-mail dated May 14, 2025, on the ground that the extension of the operative portion of the APTEL order dated April 25, 2025, may not be possible to adhere to in respect of the consumers who are currently before the High Court.

The issue of delayed payment surcharge, as it appears, has already been addressed by a Division Bench of this Court by an interim order dated May 20, 2025, passed in MAT 529 of 2023.

The operative portion of the order is quoted below:

> "The only issue with regard to payment of Late Payment Surcharge. In fact, this issue came up for consideration before the learned Appellate Tribunal for Electricity and an interim order passed on 25th April, 2025 by the learned Tribunal holding that D.V.C. would not be justified in insisting on the appellants paying late payment surcharge on the arrears. Though the order passed by the learned Tribunal would not bind this Court, this Court had taken note of the earlier orders passed by the learned Tribunal, which had travelled up to Hon'ble Supreme Court and conditional interim order was passed in tune with the direction issued by the learned Appellate Tribunal for Electricity. Therefore, the Court will be well-justified in adopting the same approach in the case on hand. Furthermore, what convinced us to grant certain relief to the petitioner as because the petitioner has paid the entire demand though the direction was to pay 50% and furnish bank guarantee for the remaining 50%. Therefore, till the appeal is heard and decided DVC shall not demand any amount on LPS on the amount already paid by the petitioner towards arrears. The petitioner is directed to give an undertaking to DVC that in the event the petitioner become unsuccessful in this appeal they shall be liable to pay LPS and this amount is payable under the regulation of DVC as well as in terms of the conditions contained in the Power Purchase Agreement and the undertaking shall be furnished by the petitioner within five days from the date of receipt of the server copy of this order."

Learned counsel appearing for the respondents, however, submits that by a subsequent order dated August 22, 2024, APTEL clarified the earlier order dated July 1, 2022. It shall only apply to the parties who are before APTEL in the pending proceedings.

I, however, find no reason not to extend the benefit of the order dated May 20, 2025, passed in

MAT 529 of 2023 in respect of the petitioners since it appears that the petitioners stand on a same footing with the appellants in MAT 529 of 2023 insofar as it relates to levy of delayed payment surcharge.

Accordingly, the said order dated May 20, 2025 is made applicable to the petitioners till the disposal of MAT 529 of 2023.

The liability of the petitioners to make payment of the delayed surcharge shall abide by the outcome of MAT 529 of 2023.

Since affidavits are not called for, the allegations made by the writ petitioners shall be deemed to be denied by the respondents.

Accordingly, **WPA 11213 of 2025** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, *J.*)