

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**WEST BENGAL**

**Petition No. WBERC/AT-63**

**Date of hearing: 2<sup>nd</sup> November, 2022**

**Time of hearing: 11.00 hours**

**Quorum:**

**Dr. Mallela Venkateswara Rao, Chairperson**

**Shri Pulak Kumar Tewari, Member**

In the matter of

Petitions filed by Damodar Valley Corporation (DVC) and Damodar Valley Power Consumers' Association (DVPCA) before the Hon'ble Appellate Tribunal for Electricity (APTEL) in appeals no. 263 of 2015 and 275 of 2015 respectively challenging the order of the West Bengal Electricity Regulatory Commission (Commission) issued vide dated 24.08.2015 determining the Annual Revenue Requirement (ARR) for the financial years 2009-2010 to 2013-2014 and retail supply tariff for financial year 2013-2014.

And

In the matter of

Damodar Valley Corporation  
DVC Towers  
VIP Road  
Kolkata 700 054

..... Petitioner

And

Damodar Valley Power Consumers' Association  
Ideal Centre, 4<sup>th</sup> floor  
9 AJC Bose Road  
Kolkata 700 017

..... Petitioner

And

Other Stakeholders

**Representatives attended:**

**Damodar Valley Corporation (DVC) (Petitioner)**

1. Sri Subrata Ghosal, Principal Chief Engineer (Commercial)
2. Sri Debshankar Ghosh, Executive Engineer (Commercial)

**Damodar Valley Power Consumers' Association [Petitioner]**

1. Sri Rajiv Yadav, Advocate
2. Sri Shreekant Dhuri, Consultant

**Other Stakeholders**

None were present

**CASE IN BRIEF**

- 1.0 The West Bengal Electricity Regulatory Commission (hereinafter referred to as the 'Commission') the Tariff Order dated 24.08.2015 in favour of Damodar Valley Corporation (in short 'DVC') determining the Annual Revenue Requirement for the years 2009 – 2010 to 2013 – 2014 and retail tariff for the year 2013 – 2014. Being aggrieved by the order dated 24.08.2015 of the Commission, DVC filed an application before the Hon'ble Appellate Tribunal for Electricity (in short 'APTEL') in appeal no. 263 of 2015 challenging the order of the Commission on different 11 (eleven) issues of the order, in question.
- 1.1 In the meantime, the Damodar Valley Power Consumers' Association (in short 'DVPCA') has also filed an application before the Hon'ble APTEL in appeal no. 275 of 2015 challenging the order dated 24.08.2015 of the Commission.
- 1.2 Subsequently, in terms of order passed by the Hon'ble High Court at Calcutta, the Commission has passed an order dated 19.03.2020 determining the retail tariff for the years 2009 – 2010 to 2012 – 2013, as the same was not determined in the order dated 24.08.2015 of the Commission. The Commission has also passed the Annual Performance Review (in short 'APR') order on 31.05.2021 in favour of DVC for the financial years 2009 – 2010 to 2013 – 2014. However, DVC has filed a review petition before the Commission on 26.07.2021 for review of the order dated 31.05.2021 which is still pending before the Commission.
- 1.3 During the pendency of the appeal no. 263 of 2015 before the Hon'ble APTEL, DVC has made submissions by an Affidavit before the Hon'ble APTEL to the

extent that out of the 11 issues challenged in the appeal no. 263 of 2015, all the issues, excepting the issue regarding claim of carrying cost on recovery of arrear dues for the period 1.04.2013 to 31.03.2014 in 10 equal instalments, have been determined to the satisfaction of DVC by subsequent orders dated 19.03.2020 and 31.05.2021 issued by the Commission as mentioned in paragraph 1.2 above.

- 1.4 Upon hearing the submissions of all the parties, the Hon'ble APTEL has passed the judgement dated 19<sup>th</sup> September, 2022 to the following extent remitting the matter back to the State Commission on the issue of 'carrying cost'.

*"5. The issue which survives for consideration in the appeal at hand is claim of carrying cost on recovery of arrear dues for the period 01.04.2013 to 31.03.2014 in ten equal instalments w.e.f. October, 2015 onwards. The learned counsel for the appellant, on instructions, submitted that in view of the above, the present appeal is pressed only for consideration of the said issue of carrying cost.*

*6. We have heard the learned counsel for the parties. The appellant in pressing the claim for carrying cost as above is relying primarily on the judgement of Full Bench of this tribunal rendered on 11.11.2011 in OP no. 1 of 2011. It is fairly conceded by the learned counsel on all sides that through this issue was pressed, the same has not received due consideration by the impugned order, the judgement dated 11.11.2011 in OP no. 1 of 2011 of this Tribunal having not even been discussed. In these circumstances, we feel it would be appropriate to remit the issue to the State Commission for consideration of the claim of carrying cost.*

*7. We order accordingly.*

*8. Given the fact that DVPCA, the appellant in Appeal no. 275 of 2015 after it was brought into being has been participating in the proceedings in the above nature not only before the State Commission but also prosecuting the interests of the consumers at large before this tribunal by above said appeal and also appeals taken out against subsequent orders dated 19.03.2020 and 31.05.2021, it will be appropriate that while considering the issue of carrying cost, on remit,*

*as is being ordered, the said party is also heard by the State Commission before it takes a final view, at its end.*

*9. In the above facts and circumstances, we direct that the State Commission shall hear the parties, as well as all stakeholders, including DVPCA on the issue of carrying cost and pass a comprehensive order thereupon in accordance with law*

*10. We are conscious that the impugned Order dated 24.08.2015 is also under challenge by Appeal no. 275 of 2015 preferred by Damodar Valley Power Consumers Association. The said association having also brought into challenge the subsequent orders of the State Commission rendered on 19.03.2020 and 31.05.2021 by Appeal no 22 of 2022 and DFR no. 297 of 2021. The remit, to the extent ordered as above, will be without prejudice to the contentions raised in the said pending appeals and subject to decisions thereupon."*

- 2.0 In light of the above, the Commission vide its Notice under reference no. WBERC/AT/63/3068 dated 21<sup>st</sup> October, 2022 convened an e-hearing on 2<sup>nd</sup> November, 2022 at 11.00 hours wherein DVC and all stakeholders including DVPCA were invited to attend the e-hearing so that the Commission can hear all the parties before passing comprehensive order.
- 2.1 The e-hearing was held as scheduled and the representatives from DVC and DVPCA were present when no other stakeholders were present.

#### **SUBMISSION DURING HEARING**

- 3.0 At the outset, the representative of DVC prayed before the Commission to allow them a further chance to plead in the case since their Advocate-on-Record could not attend the instant hearing due to pre-occupations. The Ld. Advocate of DVPCA submitted that the present hearing is regarding carrying cost on the arrears based on the judgement of the Hon'ble APTEL. But, it is not clear to DVPCA as to what would be the point of discussions, since DVC has not filed any submission on the issue of carrying cost before the Commission nor any copy of the same has been served upon DVPCA. The Ld. Advocate of DVPCA also submitted that DVC may be directed to make submissions on the issue of

## OBSERVATIONS OF THE COMMISSION

4.0 The Commission observes that the present hearing has been undertaken on the order of the Hon'ble APTEL where the Commission has been directed to undertake the hearing on the limited issue of carrying cost and to pass a comprehensive order. Hence, the matter has been taken up for hearing giving opportunity to DVC and other stakeholders including DVPCA. Since the Counsel of DVC is absent today, it would be appropriate to give a further date of hearing so that DVC can participate in the hearing with their counsel who is well acquainted with the facts and circumstances of the case, in question.

## ORDER

5.0 In view of the above observations, the Commission adjourns the hearing with the following directions:

- a) DVC shall submit their written note of submission on the issue of carrying cost with amount of carrying cost, detailed break-up of the carrying cost and the calculation of the carrying cost arrived, to the Commission within seven days from the date of receipt of this order and serve a copy of the same to DVPCA under intimation to the Commission;
- b) DVPCA shall submit their reply to the written note of submission of DVC to the Commission within seven days upon receipt of the written note of submission of DVC;
- c) The next date of hearing will be fixed upon receipt of the written note of submission of DVC and the reply thereupon by DVPCA.

Sd/-  
(PULAK KUMAR TEWARI  
MEMBER

Sd/-  
(MALLELA VENKATESWARA RAO)  
CHAIRPERSON

DATE: 07.11.2022

Sd/-  
SECRETARY