

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 215 of 2017**

**IN THE MATTER OF:**

**Arkay Energy (Rameshwaram) Ltd. ...Appellant**

**Vs**

**Tamil Nadu Generation & Distribution Co. Ltd. ....Respondent**

**With**

**Company Appeal (AT) (Insolvency) No. 231 of 2017**

**IN THE MATTER OF:**

**IndBarath Thermal Power Ltd. ...Appellant**

**Vs**

**Tamil Nadu Generation & Distribution Co. Ltd. ....Respondent**

**With**

**Company Appeal (AT) (Insolvency) No. 232 of 2017**

**IN THE MATTER OF:**

**IndBarath Powergencom Ltd. ...Appellant**

**Vs**

**Tamil Nadu Generation & Distribution Co. Ltd. ....Respondent**

**Present:**

**For Appellant: Mr. Anirudh Krishnan, Mr. Anirudh Wadhwa, Mr. Bhargav R. Thali and Mr. Keerthikaran, Advocates.**

**For Respondent: Mr. Amrendra Saran, Sr. Advocate with Mr. G. Umapathy, Mr. S. Vallinayagah and Mr. C. S. Kiran, Advocates.**

**ORDER**

**29.05.2018:** Learned counsel for the Appellant submits that the parties have settled the dispute. A copy of the Minutes of the 6<sup>th</sup> Meeting held in PWD

Conference Hall, Energy Department, Fort St. George, Chennai on 24.05.2018 has been produced which reads as follows:-

MINUTES OF THE 6<sup>th</sup> MEETING HELD IN PWD CONFERENCE HALL, ENERGY DEPARTMENT, FORT ST.GEORGE, CHENNAI ON 24.05.2018 AT 4.30P.M. BETWEEN TANGEDCO AND AUTHORISED REPRESENTATIVES OF M/S ARKAY ENERGY (RAMESWARAM) Ltd., M/S IND BARATH POWERGENCOM LTD., & M/S IND BARATH THERMAL POWER LTD.

Members Present

TANGEDCO

1. Thiru Vikram Kapur, I.A.S., CMD/TANGEDCO
2. Thiru M.Manoharan, Director/Finance /TG
3. Thiru K.Sundaravadhanam, CFC/General
- 4.. Thiru Narayanan, CE/PPP.
5. Thiru S.Thirunavukkarasu, SE/Power Purchase
6. Tmy. V.Savitha, FC/General.
7. Thiru S.Doraisamy, SE/OA & CO.

COMPANY REPRESENTATIVES

1. Mr. Raghu, Chairman
2. Mr.Bharath, Vice Chairman
- 3.Mr.M.N.V.Sudhakar,  
President (Adm & com)
4. Mr.T.S.Das, Vice President
- 5.Mr.M.Kamaraj,Vice President
- 6.Mr.R.S.Vignesh Karthik,  
Deputy Manager.

With reference to the Hon'ble NCLAT's order dated 10.05.2018, which was posted on its website on 14.05.2018, and in continuation of the previous meetings held on 18.04.2018, 30.04.2018, 07.05.2018 and 15.05.2018, TANGEDCO and Appellant companies had discussions on the various issues under dispute, particularly the statement of accounts and the accounting of energy as per the PPA, during the period from 18.05.2018 to 23.05.2018. Based on this, a reconciliation meeting was called on 24.05.2018.

2) TANGEDCO read out the details of the claims and admissions for the period from Oct 2015 to May 2016 in respect of all the three Appellant companies of the Ind Barath group. The amounts covered under various disputes which have been mentioned in all submissions before the Hon'ble NCLAT as well as in the minutes of the 3<sup>rd</sup> meeting held on 07.05.2018, which are pending before the Hon'ble High Court of Madras, City Civil Court, Hyderabad and Indore

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were also read out. Most of the disputed amounts are covered under the writ petitions and civil suits, which are pending finalization.

3) TANGEDCO stated that it has received a notice from M/s AAV Partners, Advocates and Solicitors dated 18.05.2018 in respect of four civil suits on behalf of their clients, M/s Millenium Steel India Pvt. Ltd., and M/s Black Burn Fuels Pvt. Ltd., bearing C.S.No.400, 401, 402 and 403/2017 before the Hon'ble High Court, Madras and they have called upon TANGEDCO to desist from disbursing any monies to M/s Ind Barath Thermal Power Ltd., and M/s Ind Barath Powergencom Ltd., until the issue is resolved by the Hon'ble High Court, Madras.

4) In this regard TANGEDCO sought from Ind Barath all the prohibitory orders covered under various proceedings and pending before all the courts in India, wherever the same have been filed, so as to bring them on record in respect of the three Appellants, viz., M/s Arkay Energy (RMM) Ltd., M/s Ind Barath Thermal Power Ltd. and M/s Ind Barath Powergencom Ltd, by way of an affidavit as part of account statements.

5) M/s Ind Barath, having concurred to calculate the dues for all its three Appellant companies, upon reconciliation, it was agreed by both parties that the pending bills towards power purchase (including compensation charges) in respect of the three companies in all works out about Rs.124 crores. It was also pointed out by TANGEDCO that there are certain recoveries to be made, some of which are covered under court cases, and include receivables by TANGEDCO on account of current consumption charges, as well as likely excess payments made to Ind Barath that have been pointed out by auditors, to the extent of about Rs.101crores. Pending reconciliation with the audit, if the above recoveries are to be deducted, the balance outstanding principal due to Ind Barath group works out to about Rs.23 Crores (Rs.124 Crores –Rs.101 Crores)

6) On the issue of interest, during the meeting, Ind Barath agreed to revise its method of calculation from 'compound interest' to 'simple interest'. Ind Barath, however, did not concur to a 50% waiver of interest, as requested by TANGEDCO. Thus the total interest payable as per TANGEDCO's workings in respect of the three Appellant companies provisionally works out to about Rs.281 Crores (Rs.235.78 Crores + Rs.45.61\* Crores). However, according to the appellant companies, the total sum is working out to Rs.312.25 Crores

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approximately (Rs.266.64 Crores + Rs.45.61 Crores) as per the agreed methodology of interest calculation and the same has to be reconciled at the earliest.

7) TANGEDCO has already deposited in the Hon'ble High Court of Madras an amount of Rs.75 Crores in various civil suits involving the above two companies namely M/s Ind Barath Thermal Power Ltd., & M/s Ind Barath Powergencom Ltd., in favour of The Registrar General, Hon'ble High Court of Madras. Considering this, the overall balance amount payable by TANGEDCO provisionally works out to about Rs.229 crore(23 + 281 - 75) as detailed below:

S.No.	Description	Ind Barath Group Companies			Total
		Arkay Energy	Power Gencom	Thermal Power	
1	Power purchase bills (including compensation)	99.77	0.007	24.26	124.037
2	Less: Recoveries from bills	0.16	47.56	52.97	100.69
3	Less: Deposits in Hon'ble High Court of Madras.	0.00	14.27	61.17	75.44
4	Principal dues (S. No.1-2-3)	99.61	-61.823	-89.88	-52.093
5	Add: Interest on delayed payment	70.61	80.07	85.10	235.78
6	Add: Interest on Unpaid Bills	38.63	0.0025	6.98	*45.61
7	TOTAL (S.No.4+5+6)	208.85	**18.25	**2.20	229.30

\*\* Subject to various prohibitory orders

Further, Ind Barath insisted on payment of interest on delayed payment of an additional Rs.31 crores (Rs.266.64 -Rs.235.78crore) and the interest on unpaid paid bills of Rs.45.61\* Crores in Sl.No.6 in the above table, which are yet to be reconciled between TANGEDCO and Ind Barath.

8) Apart from the above deposits mentioned in Sl.No.3 there are prohibitory orders in suits filed by M/s IL&FS, M/s Adani, M/s Sakthi Energy

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before the Hon'ble High Court of Madras and suits filed in the City Civil Court, Hyderabad and Indore. It is also to be noted that the Hon'ble High Court of Madras has ordered TANGEDCO to deposit a sum of about Rs.13 crore in an application filed under Sec.9 of the Arbitration Act by M/s Karam Chand Thapar. All these orders need to be taken into account before making any releases to Ind Barath.

9) During the meeting it was agreed upon between TANGEDCO and Ind Barath that in lieu of the above payment, the release of which is subject to orders of the Hon'ble High Court of Madras and other courts, all the cases filed by Appellant companies against TANGEDCO and pending before Hon'ble High Court of Madras, Hon'ble NCLAT, Civil Courts and any other forum, shall be withdrawn by them. Without prejudice to the contentions of TANGEDCO, the final amount so arrived after reconciliation between the parties will not attract any interest, simple or compound, from the date of crystallization of the total amount payable by TANGEDCO to the Appellant companies. The amount so crystallized may be paid by TANGEDCO in instalments at mutually agreed terms at the earliest.

10) Both TANGEDCO and Ind Barath reiterated that all efforts will be made to settle other outstanding issues, such as excess payment of power purchase bills pointed out by audit, and in case the same are not resolved amicably, to approach the appropriate authority for dispute resolution, viz, the Hon'ble TNERC. It was also agreed that both parties will be open to discussing all issues in good faith.

11) Ind Barath agreed that this record of discussions shall be filed by them by way of an affidavit before the Hon'ble NCLAT on the next hearing due on 29.05.2018, without insisting on payment of the entire agreed dues, immediate payment of reasonable sum as mutually agreed so as to enable it to withdraw its Appeal before the Hon'ble NCLAT.

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2. Mr. Amrendra Saran, learned senior counsel appearing on behalf of the Respondent – 'Tamil Nadu Generation & Distribution Company Ltd.' submits that in view of terms and conditions of the agreement, the Appellants are required to withdraw the appeal. He also handed over an account payee cheque

bearing number 852321 dated 28.05.2018 for Rs.40,00,00,000/- (Rupees Forty Crore Only) issued in the name of 'Arkay Energy (Rameshwarm) Limited' issued by State Bank of India, Commercial Branch Chennai to learned counsel for the Appellant for onward transmission to the Appellant.

3. On instruction learned counsel appearing on behalf of the Appellant sought permission to withdraw the appeal in view of the settlement reached above.

4. In view of such prayer, all the appeals stands disposed of as withdrawn. Parties are directed to act in term with the agreement.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

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