[2023] 14 S.C.R. 761 : 2023 INSC 993

CASE DETAILS

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED

v.

RATNAGIRI GAS AND POWER PRIVATE LIMITED & ORS

(Civil Appeal No. 1922 of 2023)

NOVEMBER 09, 2023.

[DR. DHANANJAYA Y CHANDRACHUD, CJI , JB PARDIWALA AND MANOJ MISRA, JJ.]

HEADNOTES

Issue for consideration: Whether the Central Electricity Regulatory Commission-CERC and Appellate Tribunal for Electricity-APTEL were justified in affixing liability to pay fixed charges on the appellant.

Electricity Act, 2003 – s. 79 – Payment of fixed capacity charges – Fixation of liability – Power Purchase Agreement between the appellant and first respondent whereby the appellant would purchase power from the first respondent – First respondent was supposed to receive the contracted quantity of gas supply from RIL, however after there was a decline in the supply – In order to make up for the shortfall, the first respondent entered into a Gas Supply Agreement-GSA with GAIL for the supply of Recycled Liquid Natural Gas, and conveyed the same to the appellant and requested the appellant to schedule its energy requirements – Appellant refused to schedule power at the rates stipulated and stated that it stood absolved of the liability to pay capacity charges in accordance with the PPA – Petition u/s. 79 by the first respondent for non-payment of fixed charges – CERC held the appellant liable to pay fixed capacity charges under the PPA – APTEL upheld the order – Correctness:

Held: Commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document – Deviation from the plain terms of the contract is warranted

only when it serves business efficacy better – According to the principles governing the interpretation of contracts, the PPA is required to be read as a whole – Primary fuels include LNG/Natural gas and/or RLNG, and the appellant's agreement is required in case liquid fuels are to be employed – A bare reading of the clause indicates that the requirement to seek such an agreement does not attach to the first part of the clause which envisages RLNG as a primary fuel – An arrangement involving a transition from one primary fuel to another primary fuel is permissible by the clause, even without the appellant's agreement – Requirement of an agreement, mandated for an arrangement involving liquid fuel cannot be read into the plain text of the former part of Clause 4.3 – Capacity declaration based on RLNG could be done unilaterally, unencumbered by the requirement of the appellant's consent in the latter half or the prior approval requirement under Clause 5.9 of the PPA – Thus, the CERC and APTEL correctly held that the GSA/GTA with GAIL is permissible by the terms of the contract and the consent or approval of the appellant is irrelevant. [Para 28-29, 32, 35-36]

LIST OF CITATIONS AND OTHER REFERENCES

Transmission Corporation of Andhra Pradesh Ltd v. GMR Vemagiri Power Generation Limited (2018) 3 SCC 716 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1922 of 2023.

From the Judgment and Order dated 22.04.2015 of the Appellate Tribunal for Electricity at New Delhi in AN No.261 of 2013.

Appearances:

Vikas Singh, Sr. Adv., Samir Malik, Ms. Nikita Choukse, Akash Lamba, Krishan Kumar, M/s. D.S.K. Legal, Advs. for the Appellant.

C. Aryaman Sundaram, Sr. Adv., Mrs. Swapna Sheshadri, Anand K Ganesan, Nitin Saluja, Ms. Ritu Apurva, Ms. Archita Kashyap, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

DR. DHANANJAYA Y CHANDRACHUD, CJI

Contents

1. This appeal arises from the judgment of the Appellate Tribunal for Electricity[1] at New Delhi. APTEL dismissed an appeal against an order of the Central Electricity Regulatory Commission[2] dated 30 July 2013.[3]

2. The first respondent, an electricity transmission company called Ratnagiri Gas And Power Private Limited[4], filed a petition under Section 79 of the Electricity Act, 2003 against the appellant, Maharashtra State Electricity Distribution Co. Ltd.[5], seeking the resolution of issues arising out of the non-availability of domestic gas; beneficiaries' reservations to allow the first respondent to enter into contracts for alternate fuel, the revision of the Normative Annual Plant Availability Factor[6] and directions to the beneficiaries to pay fixed charges due to the first respondent.

3. CERC, by its order dated 30 July 2013 held the appellant liable to pay fixed charges to the first respondent. CERC's decision was upheld by

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* Ed Note: Pagination is as per the original judgment.

1 "APTEL".

2 "CERC".

3 Appeal No. 261 of 2013

4 "RGPPL"/first respondent.

5 "MSEDCL"/appellant.

6 "NAPAF".

APTEL by the impugned order. The civil appeal against the APTEL order was disposed of by this Court by an order dated 13 May 2015, whereby the appellant was granted liberty to move the court when it became necessary. This Court directed as follows:

> "The question raised in the present appeal before this Court at this stage appears to be academic in the absence of any coercive steps against the appellant for recovery. We, therefore, decline to entertain this appeal at this stage. However, we give liberty to the appellant to move this Court once again in the event it becomes so necessary."

4. Consequently, there was correspondence between the appellant and the first respondent regarding the liability towards fixed charges. The appellant disclaimed any liability under the Power Purchase Agreement[7] stating that it stood absolved of the fixed charges since the capacity declaration was made by the first respondent based on RLNG, without the appellant's consent. The first respondent filed an execution petition before APTEL seeking the payment of Rs 5287.76 crores together with an amount of Rs 1826 crores in accordance with the APTEL order dated 22 May 2013. Notice was issued on the execution petition by an order dated 25 November 2022.

5. Thus, in light of the subsequent events and the liberty granted by this Court, the present appeal has been filed.

FACTUAL BACKGROUND

6. The first respondent, RGPPL is a joint venture of NTPC Ltd., Gas Authority of India Ltd[8], MSEB Holding Company, ICICI, IDBI, SBI, and Canara Bank. It was established as a Special Purpose Vehicle to take over the assets of Dabhol Power Company Limited whose operations had to be closed down. The first respondent is a transmission company that owns a gas-based generating station at Ratnagiri, Maharashtra. 95% of its capacity has been allocated by the Ministry of Power to the State of Maharashtra and the rest to the State of Goa, and UTs of Daman and Diu, and Dadra and Nagar Haveli. The share allocated to the State of Maharashtra is supplied

7 "PPA".
8 "GAIL"

to the distribution licensee MSEDCL, the appellant. The appellant and the first respondent entered into a Power Purchase Agreement on 10 April 2007 for 25 years whereby the appellant would purchase power from the first respondent. The tariffs for the three blocks of the generating station were determined by CERC in accordance with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 having regard to the capital cost and plant capacity of the generating station.

7. The first respondent was supposed to receive the contracted quantity of gas supply from RIL. It is stated on behalf of the first respondent that the supply was received accordingly until September 2011, after which, there was a progressive decline in the gas supply. The shortfall was attributed to the low-yielding KG-D6 gas fields. The issue of short supply was taken up with the Central Government and was placed before the Empowered Group of Ministers in its meeting held on 24 December 2012.

8. On account of the steady decline in the supply of domestic gas since September 2011, and in order to make up for the shortfall in the generation of power during 2011-2012, the first respondent entered into a Gas Supply Agreement/Gas Transportation Agreement[9] with GAIL for the supply of Recycled Liquid Natural Gas[10] under spot cargo on a take-and-pay-contract basis. The first respondent conveyed this to the appellant by a letter dated 16 December 2011. In this letter, the first respondent stated that due to the shortfall in the supply of domestic gas, the first respondent was unable to achieve the target availability stipulated in the tariff order. According to the first respondent, this, in turn, was impacting their ability to make full fixed cost recovery and hampering the viability of the project. The appellant was requested to schedule its energy requirements accordingly based on capacity declarations made by the first respondent.

9. The appellant refused to schedule power at the rates stipulated in the above letter. The appellant stated that in accordance with Clause 5.9 of the PPA, the first respondent failed to obtain the appellant's approval before entering into the GSA/GTA with GAIL. As such, the declaration of capacity on RLNG was stated to be unilateral and arbitrary and in violation

9 "GSA"/"GTA".
10 "RLNG"

of the terms of Clause 5.9 of the PPA which mandated prior approval from the appellant. Therefore, the appellant stated, that it stood absolved of the liability to pay capacity charges in accordance with the PPA. Letters were exchanged between the appellant and the first respondent from 17 December 2011 to 01 March 2012.

10. In order to resolve the above issue of non-payment of fixed charges, the first respondent filed a petition under Section 79 of the Electricity Act 2003 seeking the resolution of the issue of shortfall of domestic gas, the reservations of the beneficiaries to allow it to enter into alternate contractual arrangements for fuel i.e. RLNG. The petition additionally sought the revision of the NAPAF and directions to the beneficiaries to pay outstanding fixed charges.

CERC ORDER DATED 30 JULY 2023 AND APTEL JUDGEMENT AND FINAL ORDER DATED 22 APRIL 2015.

11. CERC allowed the above petition and held the appellant liable to pay fixed capacity charges under the PPA. It held that (i) Clause 4.3 of the PPA permits the use of LNG/Natural gas or RLNG as a 'primary fuel'; (ii) the first respondent is permitted to use even liquid gas, albeit with the consent of the appellant; (iii) the terms of the PPA do not injunct the first respondent from declaring capacity based on RLNG; (iv) the beneficiaries have the option to dispatch or refuse to dispatch the capacity on natural gas, RLNG, or liquid fuel; (v) in the event they choose to refuse the dispatch, they cannot repudiate the liability to pay fixed charges citing the transmission company's failure to obtain approval; (vi) such consent or approval is not necessary for declaring capacity based on the contractually designated primary fuels, including RLNG; (vii) the requirement of seeking the appellant's approval under Clause 5.9 is not a mandatory pre-requisite for making capacity declarations under Clause 4.3; (viii) the fixed tariffs are payable on declared capacity; (ix) since the first respondent was unable to obtain domestic gas due to a country-wide shortage, they made arrangements for RLNG; (x) the appellant's decision to not schedule the supply based on RLNG has a bearing on variable charges and not on the fixed charges; and (xi) the appellant was thus liable to pay the fixed charges based on capacity declarations made on RLNG by the first respondent.

12. APTEL upheld the above order in the following terms:

a. The need to obtain the consent of the distribution licensee arises only when the power generation company makes arrangements based on liquid gas. In the present case, the only change in question is being made from one primary fuel to another primary fuel i.e. from natural gas to RLNG. Both of these are "primary fuel for RGPPL" in accordance with Article 4.3 of the PPA. This change, unlike the change from primary fuel sources to liquid gas, does not require the consent of the distribution company;

b. The PPA did not require the power generation company to obtain the consent of the distribution licensee for entering into the GSA/GTA with GAIL. The plant was set up after significant efforts from the central and state governments. The first respondent was left with no choice but to enter into the GSA/GTA with GAIL in order to overcome the domestic gas shortage. The appellant had refused to schedule power for the declared availability based on RLNG to be supplied under the GSA/GTA;

c. The first respondent has declared the necessary availability of electricity when the appellant has chosen not to schedule the quantum of electricity on the declared availability. As long as the first respondent has the declared available capacity and irrespective of whether the appellant has scheduled the capacity offered by the first respondent, the appellant is liable to pay the fixed capacity charges; and

d. The first respondent has invested in establishing, operating, and maintaining the generating station. The annual fixed charges are determined with reference to specific tariff requirements stemming from the Tariff Regulations of 2009. The capital costs invested in the station need to be serviced by way of the annual fixed charges.

Thus, APTEL directed that if the appellant wishes to not pay for the electricity from RLNG, it must pay compensation to the first respondent, since it is liable, under Article 5.2 of the PPA, to pay the capacity charges. No prior consent, as envisaged in Article 5.9, is required, in order for such liability to arise.

13. APTEL thus held that the appellant has been rightly ordered to pay the capacity charges notwithstanding the fact that they have not consented to the GSA/GTA with GAIL. The appeal was thus dismissed.

14. The Civil Appeal against APTEL's decision was initially disposed of by this Court. Since the appellant was not facing any punitive action for recovery, the appeal was dismissed and the appellant was granted the liberty to approach the Court when necessary.

15. In view of the above liberty, the present appeal is before us.

16. Following the issue of notice, the first respondent has entered appearance and filed a counter affidavit.

17. We have heard Senior Counsel for the appellants and respondents.

SUBMISSIONS

18. The appellant urged the following submissions in its challenge to APTEL's judgment and final order:

a. CERC has put Clause 4.3 and Clause 5.9 of the PPA in two separate buckets. According to the PPA (clauses 4.3, and 5.9 read conjointly), the first respondent was obligated to obtain prior approval from the appellant before entering into the GSA/GTA with GAIL. Failing this requirement, the first respondent has absolved the appellant of the obligation to pay for the declared capacity to the extent that such declared capacity is attributable to the RLNG which though, a primary source of fuel, could have been obtained by the first respondent only after prior consent of the appellant;

b. The placement of the prior approval clause in clause 5.9 suggests that it applies to clause 5.2 capacity charges as well as clause 5.3 energy charges. The impugned decisions make an artificial distinction between the two sub-clauses and the two types of charges and incorrectly subjects only clause 5.3 (energy charge) and not clause 5.2 (capacity charge) to the approval requirement in clause 5.9;

c. Clause 5.9 reads as follows:

> "the conditions of GSA/GST having commercial implications (for example, bearing on plant availability, contracted quantity, price components, Take or pay provisions, penalties, and damages, etc.) shall be signed separately with the MSEDCL as supplementary agreement. The total required to be Gas/LNG is envisaged procured through short-term contracts long long-term contracts through GAIL and under the directions of GOI, the details of which shall be furnished in due course. RGPPL shall be required to obtain approval of MSEDCL on contracting terms and price before entering into the GSA/GTA contract."

The phrase "commercial implication" makes the consent requirement applicable to the present GSA/GTA. The commercial implication of "plant availability" is the average of daily declared capacity as a percentage of net capacity. Thus, plant capacity stands affected by the decision to adopt RLNG which affects the quantum of declared capacity. Thus, the use of RLNG by the first respondent automatically has "commercial implications" and as such, the prior approval requirement in clause 5.9 stood invoked;

d. There is an "organic interlinking" between clause 5.9, commercial implications, plant availability, declared capacity, and declaration of capacity in terms of choice of fuel as provided in clause 4.3. Therefore, the compartmentalization of clauses 4.3 and 5.9, which is the premise of the impugned decisions is flawed;

e. For the reasons stated above, the plant availability factor would be less than 70%, and as such, the capacity charges would be reduced in accordance with Clause 21(1)(a) of CERC (Terms and Conditions of Tariff) Regulations 2009;

f. CERC and APTEL have virtually re-written the contract between the parties which is impermissible under settled principles of contractual interpretation. The correct reading must be in accordance with the terms of the contract as well as the conduct of the parties to the contract. The conduct of the parties in the present case suggests that the approval of the appellant was a

mandatory pre-requisite in order to attach the liability of fixed charges to the appellant. In the past, for a similar GSA, prior approval of the appellant was sought by the first respondent. As such, the intention as evinced by this past conduct, seems to be that the consent requirement was a mandatory pre-requisite for such GTA/GSA. Failing that, the liability of the appellant to pay does not arise; and

g. The impugned decisions will impact the customers of the appellant.

19. As against the above, the first Respondent urged the following submissions:

a. The generating station was established to meet the electricity demands of the appellant. After the failure of M/s Enron International, and M/s Dabhol Power Company, the generating station was revived and its assets were transferred to RGPPL, the first Respondent, by virtue of an order of the Bombay High Court dated 22.09.2005. NTPC Ltd and GAIL owned 23.5% shares each while the Appellant held 13.51% shares in the first respondent at the time of the take-over; and

b. The capacity declaration using RLNG as well as demanding capacity charges based on such declared capacity are in accordance with Clauses 4.3 and 5.2 of the PPA. The PPA contained no clause for termination of the PPA, and was thus valid for 25 years from the Commercial Operation Date.[11] As such, the appellant is bound by the PPA as a whole and particularly by Clauses 6.6. and 6.7 which stipulate that even if a dispute is pending, the Appellant is bound to pay 95% of the charges during such pendency, which the Appellant has failed to do.

ANALYSIS AND CONCLUSION

20. The issue that arises for consideration is whether the CERC and APTEL were justified in affixing liability to pay fixed charges on the

11 "COD".

appellant. The dispute primarily turns on the terms of the PPA. For the reasons stated hereafter, we answer the issue in the affirmative.

TERMS OF THE PPA

21. "Declared Capacity" means the capability of the Station to deliver ex-bus electricity in MW declared by the Station in relation to any period of the day, or the whole day, duly taking into account the availability of Gas and liquid fuels.[12]

22. The Station has to allocate 95% of its capacity to MSEDCL after the COD of respective power blocks/stations. MSEDCL is liable to pay full capacity charges as mentioned in Clause 5.2 and shall be entitled to corresponding incremental power.[13]

23. Clause 4.3 states as follows:

4.3 Declared Capacity

> Primary Fuel for RGPPL is LNG/Natural gas and/or RLNG. Normally capacity of the station shall be declared on gas and/or RLNG for all three power blocks. However, if agreed by MSEDCL, RGPPL shall make arrangements of Liquid fuel(s) for the quantum required by MSEDCL. In such a case the capacity on liquid fuel shall also be taken into account for the purpose of Availability, Declared Capacity and PLF calculations till the time Liquid fuel(s) stock agreed/requisitioned by MSEDCL is available at site."

24. Clause 5 of the PPA deals with Tariff and states that the Tariff of the Station shall be ascertained based on the restructuring model as approved by the GOI and GOM and IFIs for the revival of the erstwhile Dabhol Power Project and that the Station cannot be compared with other power stations as the financial and technical parameters have been restructured to arrive at a viable and acceptable tariff.

25. The PPA provides for the tariffs to be paid in two parts: capacity charges i.e. fixed charges corresponding to the declared capacity and energy

12 Clause 1.1(b), PPA.
13 Clause 2.2.1, PPA.

charges i.e. variable charges corresponding to the actual electricity delivered. The relevant clauses are extracted below:

5.2 "Capacity Charge

The Annual Capacity Charge (ACC) of Power Block for supply of power from the station worked out to Rs. 1446.451 Cr. per annum based on capacity charge of 96p/KWH finalized at the time of asset takeover by RGPPL. This Capacity Charge of 96p/KWH is increased to 98.5p/KWH pursuant to discussions under the aegis of Gd. This Capacity Charge of 98.5p/KWH is subject to further review and finalization by GoT and GOM pursuant to the ongoing restructuring exercise under consideration by GoI to ensure project viability based on above capacity charges on levelized basis of 98.5p/KWH, the total Annual Capacity Charges work out to Rs 1484.12 Cr. per annum.

Full capacity charges shall be payable at 80% of 2150MW (i.e.1720MW) declared capacity lower than this shall be recovered on pro-rata basis after COD of Block(s)/Station. MSEDCL shall pay capacity charges in proportion to the allocation of power from RGPPL.

…

5.3 Energy Charges:

The Energy Charge for supply of power from the Station shall be worked out based on the gross heat rate and auxiliary Power Consumption as given below:

…

5.4 For the purpose of Tariff computation all values of price, quantity, etc. would be considered up to eight decimal point accuracy.

5.5 Energy Charges shall be worked out on the basis of ex-bus energy scheduled to be sent out from the Station as per the following formula:

*Energy Charges (Rs) = REC9 * SG on Gas + REC * SG on liquid fuel*

5.6 Provisional Billing: RGPPL shall be billing provisionally MSEDCL based on the above rate calculated for Capacity Charges and Energy Charges and MSEDCL agrees to pay based on the above billing till

such time it is approved by CERC or other competent authority. Provisional Billing shall be adjusted after final approval of tariff by CERC or other competent authority.

5.9 Gas Supply Agreement (GSA)/ Gas Transportation Agreement (GTA) Gas supply agreement is presently for 1.5 MMTPA R-LNG upto September 2009 after being sourced through Petronet LNG Ltd and regasified at their Dahej terminal with supply though GAIL/off-takers. The conditions of GSA/GTA having commercial implications (for example bearing on Plant availability, contracted quantity, price components, Take or Pay provisions, penalties and damages etc.) shall be signed separately with MSEDCL as a supplementary agreement. The total required Gas/LNG is envisaged to be procured through short-term contracts/long-term contracts through GAIL and under the directions of GoI, the details of which shall be furnished in due course. RGPPL shall be required to obtain approval of MSEDCL on contracting terms and price before entering into the GSA/GTA contract."

26. The position which emerges from the terms of the PPA is formulated thus:

a. There are two types of tariff charges payable by MSEDCL – capacity charges under clause 5.2 and energy charges under clause 5.3;

b. For the former, the rates are fixed, having been finalized at the time of takeover by RGPPL, and are subject to revision by the Government of India or the Government of Maharashtra;

c. For the latter, the rates are to be calculated by way of the formula stipulated in Clause 5.3;

d. MSEDCL is required to schedule the sending of energy from RGPPL and the energy charges are payable according to the energy scheduled to be sent out from RGPPL to MSEDCL;

e. Provisional billing of the two types of charges shall be made until the billing is approved by CERC; and

f. The total gas requirements are to be procured through GAIL, by way of a GSA/GTA under the directions of the GOI. Before

entering into the GSA/GTA, RGPPL is supposed to obtain approval from MSEDCL on the terms of the contract and the price since such a GSA/GTA has 'commercial implications'.

27. The first respondent has consistently stated that the alternate arrangement in the form of GSA/GTA with GAIL and capacity declarations based on RLNG were necessitated on account of the unprecedented nationwide shortage of domestic fuel. But for such an alternate arrangement, the first respondent would have been unable to meet the target availability, which would have in turn affected their ability to recover fixed costs, and jeopardized the viability of the project. The appellant does not dispute the shortage of domestic fuel but merely objects to the "unilateral" decision to declare capacity based on RLNG, which the appellant states violated the mandatory approval requirement under clause 5.9 of the PPA, thereby exonerating it of the liability to pay fixed capacity charges.

28. In accordance with settled principles governing the interpretation of contracts, the PPA is required to be read as a whole. Clause 4.3 has two parts: according to the first, primary fuels include LNG/Natural gas and/or RLNG; according to the second, the appellant's agreement is required in case liquid fuels are to be employed. A bare reading of the clause indicates that the requirement to seek such an agreement does not attach to the first part of the clause which envisages RLNG as a primary fuel. An arrangement involving a transition from one primary fuel to another primary fuel is permissible by the clause, even without the appellant's agreement.

29. The requirement of an agreement, mandated for an arrangement involving liquid fuel cannot be read into the plain text of the former part of Clause 4.3. Thus, the capacity declaration based on RLNG could be done unilaterally, unencumbered by the requirement of the appellant's consent in the latter half or the prior approval requirement under Clause 5.9 of the PPA.

FACTUAL CONTEXT AND THE INTENTION OF PARTIES TO THE CONTRACT

30. We must remain mindful of the conspectus of facts that led to the establishment of the first respondent. It was set up consequent to the failure of M/s Enron International, and M/s Dabhol Power Company to meet the energy needs of the State of Maharashtra. The tariff requirements have been determined based on the need to preserve the viability of the unit.

31. The first respondent was compelled to make alternate arrangements in view of the country-wide shortage of domestic gas, making RLNG a viable and contractually permissible alternative. Notably, the appellant has not disputed the circumstances in which this need arose.

32. In the present case, CERC and APTEL have correctly held that the GSA/GTA with GAIL is permissible by the terms of the contract and the consent or approval of the appellant is irrelevant. Clause 5.9 and Clause 4.3 operate in different spheres and the requirements of the former cannot be foisted on an arrangement permissible by the latter.

33. Capacity charges mandated under Clause 5.2 hinge on the declared capacity that the Station is capable of delivering to its beneficiaries. Energy Charges, on the other hand, are payable only against the actual energy delivered. The appellant's liability for the former is actual delivery agnostic. It arises as long as the declared capacity is made in terms of the PPA i.e. Clause 4.3.

34. Clause 2.2.2 of the PPA prescribes that even in case MSEDCL is unable to utilize the entire allocated capacity of RGPPL, or in case MSEDCL fails to comply with the payment obligations in accordance with the PPA, RGPPL shall be entitled to sell power to other parties, without prejudice to its claim for recovery of capacity charges from MSEDCL subject to the provisions of Clause 2.2.2. Clause 2.2.2 indicates the intention of the parties to the PPA to put the capacity charges beyond the realm of actual energy supplied. The appellant's reading implies that such a fixed charge can be avoided and made subject to the consent of the appellant. Such a reading goes against the apparent intention of the parties to treat capacity charges as fixed charges under the PPA.

35. A commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document. A deviation from the plain terms of the contract is warranted only when it serves business efficacy better. The appellant's arguments would entail reading in implied terms contrary to the contractual provisions which are otherwise clear. Such a reading of implied conditions is permissible only in a narrow set of circumstances. This Court in **Transmission Corporation**

of Andhra Pradesh Ltd v. GMR Vemagiri Power Generation Limited[14] held as follows:

> "26. A commercial document cannot be interpreted in a manner to arrive at a complete variance with what may originally have been the intendment of the parties. Such a situation can only be contemplated when the implied term can be considered necessary to lend efficacy to the terms of the contract. If the contract is capable of interpretation of its plain meaning with regard to the true intention of the parties it will not be prudent to read implied terms on the understanding of a party, or by the court, with regard to business efficacy."

36. In the present context, bearing in mind the background of the establishment of the first respondent, and the shortfall of domestic gas for reasons beyond the control of the first respondent, such a deviation from the plain terms is not merited and militates against business efficacy as it has a detrimental impact on the viability of the first respondent.

37. The execution proceedings pursuant to the above-mentioned execution petition before the APTEL be continued.

38. The appeal is dismissed. There shall be no order as to costs.

39. Pending applications, if any, stand disposed of.

Headnotes prepared by:
Nidhi Jain

Appeal dismissed.

14 (2018) 3 SCC 716, 729 para 26.