

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 101**  
**(IB)-477/ND/2023**

**IA-6612/2023, IA-698/2024, IA-2011/2024**

**IN THE MATTER OF:**

**IndusInd Bank Ltd.**

...

**Appellant**

**Versus**

**Feedback Energy Distribution Co. Ltd.**

...

**Respondent**

**Under Section: 7 of IBC, 2016**

**Order delivered on 26.04.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ**  
**HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH**  
**HON'BLE MEMBER (T)**

**PRESENT:**

**For the Appellant** : Adv. Kapil Malik and Richa Sharma

**For the RP** : Sr. Adv. Neeraj Malhotra, Adv. Ritika Gaur, Adv.  
Niraj Chamyal, Adv. Nimesh, Adv. Sandeep Vij

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORDER**

**IA-2011/2024:** In terms of the order dated 22.02.2024 passed in IA-698/2024 the notice dated 02.02.2024 issued by Tripura State Electricity Corporation Limited was stayed, subject to the condition of furnishing the bank guarantee by the CD within 15 days from the date of the order. Indubitably, the CD failed to furnish such guarantees. It would not be gainsaid that the notice dated 02.02.2024 was sine qua non to furnishing the bank guarantee. Once the CD could not satisfy the pre-condition for operation of the interim order (ibid), the issuance of fresh termination notice by the Tripura State Electricity Corporation Limited cannot be perceived as defiance of order dated 22.02.2024. Though it is the contention by Mr. Neeraj Malhotra, Ld. Sr. Counsel appearing for the RP that the 15 days from the order dated 22.02.2024 could expire only on 07.03.2024 and the second termination notice was issued on 04.03.2024, but we could have appreciated such plea only if the bank guarantee could be furnished within 15 days. Indubitably, the requisite bank guarantee has not been furnished till date.

Even today also the plea raised on behalf of the CD is that the Tripura State Electricity Corporation Limited should issue work order, so that the bank is in a position to furnish the bank guarantee.

Confronted with the plea, Mr. Krishnendu Datta & Mr. P. Nagesh, Ld. Sr. Counsels appearing for the Tripura State Electricity Corporation Limited submitted that it was never the practise of contract between the CD and Tripura State Electricity Corporation Limited that the work orders were required to be issued and the contract of supplier and distributor between Tripura State Electricity Corporation Limited and the CD was based on Input-based Power Distribution Franchisee Agreement, a copy of which is available as Annexure A-3 to the application. It is seen from the clause (f) of the agreement that the agreement itself was for sale and purchase of electricity for distribution in franchise area through the distribution franchise as contemplated under the Electricity Act, 2003. The distribution system and other conditions mentioned in the agreement regulate the payment security deposit as also that of submission of performance guarantee. Clause 2.1.1 and 2.1.2 of the agreement under the head article two conditions precedence and conditions subsequent to the agreement reads thus:

**ARTICLE 2: CONDITIONS PRECEDENT & CONDITIONS SUBSEQUENT TO THE AGREEMENT**

**ARTICLE 2.1: CONDITIONS PRECEDENT TO BE SATISFIED BY THE DISTRIBUTION FRANCHISEE & TSECL**

**2.1.1. Submission of Payment Security Deposit**

The Distribution Franchisee shall secure the payment security deposit by providing Bank Guarantee to the satisfaction of TSECL from any nationalized bank or Scheduled Bank for an amount equivalent to 2 months' estimated amount payable to TSECL by Distribution Franchisee based on energy input at Input Points in Franchise Area and Input Energy Rate quoted by the Distribution Franchisee for first year of Franchisee term. TSECL and FEDCO shall also sign a Default Escrow Agreements

**2.1.2 Submission of Performance Guarantee**

The Distribution Franchisee shall secure the guarantee to perform by providing Performance Guarantee to the satisfaction of TSECL from any nationalized bank or Scheduled Bank for an amount equivalent to 1/10th (i.e.10%) of the total annual revenue billed in the base year. This Performance Guarantees shall be governed as per conditions stipulated in Article-11

The Earnest Money Deposit shall be refunded on submission of Performance Guarantee.

This Performance Guarantee shall be governed as per conditions stipulated in Article- 11

From the aforementioned it is clear that the contract was fully regulated by the agreement and no further work order was needed. The clause 3.1 & 3.2 of the agreement further amplified that the term of agreement was for a period of ten years i.e. 120 months from the effective date and the term could be extended for such further period as might be mutually agreed between TSECL and the CD before us. The clause 3.2 specifically provided that the agreement could be terminated before the expiration of the transit period as per the provision of Article 16 and Article 3.3 of the agreement. The clause 3.1 & 3.2 of the agreement reads thus:

#### ARTICLE 3: TERM OF AGREEMENT

##### 3.1. Term of Agreement:

The term of this Agreement shall be for a period of 10 (ten) years i.e. one hundred and twenty months from the Effective Date. The term could be extended for such further period as may be mutually agreed terms and condition between TSECL and the DF.

##### 3.2. Early Termination

This agreement can be terminated before the expiration of the Franchisee Period as per the provisions of Article-16 and Article-3.3 of this Agreement.

From the contents of the agreement it is clear that the same is self-contained. In the wake, the plea of requisition of further work order raised on behalf of the CD cannot be countenanced. Normally, no work order should be required by the bank for issuing the requisite guarantee, but may be in the wake of notice of termination issued by Tripura State Electricity Corporation Limited, the bank is insisting for the same. Of course we may not be oblivious of the fact that the Tripura State Electricity Corporation Limited is a government corporation and it is bound by the extant rules and regulation. Thus, we disposed of the application giving further 3 weeks' time to the CD to furnish bank guarantee, subject to the condition that the CIRP cost is paid to TERC within 3 days and the balance dues for the past period is cleared within one week. In case there is any anomaly regarding liability of CD to pay the CIRP cost to the corporation i.e. Tripura State Electricity Corporation Limited, the RP will appear before the Committee of Senior Advocates Mr. Krishnendu

Datta, Mr. P. Nagesh and Mr. Neeraj Malhotra within 2 days and explain the entire account to them. In the meeting of the Committee of three senior advocates, the issue of compliance of clause 11.1 of the agreement would also be discussed and the minutes of the meeting of the Committee would be filed by the RP before this Tribunal us within one week. In the meeting, the representative of Tripura State Electricity Corporation Limited would also remain present either virtually or physically. For a period of 3 weeks the notice of termination issued on 04.03.2024 shall remain stayed.

**The IA stands disposed of.**

**IA-698/2024**: In the wake of the order passed in IA-2011/2024, **the IA stands disposed of.**

**IA-6612/2023**: In view of the order dated 22.02.2024 as also the order passed in IA-2011/2024, **the IA has become infructuous and is disposed of accordingly.**

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**