

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

**Competition Appeal (AT) No. 01 of 2018**

**IN THE MATTER OF:**

**Tata Power Delhi Distribution Ltd.**

**...Appellant**

**Versus**

**Competition Commission of India & Anr.**

**...Respondents**

**Present:**

**For Appellant :**

**Mr. Vikas Singh, Senior Advocate assisted by  
Mr. Amitabh Kumar, Ms. Vibha Dhawan, Mr. Rahul  
Kinra and Mr. Anurag Bansal, Advocates**

**For 1<sup>st</sup> Respondent:**

**Mr. Rajshekhar Rao and Ms. Aakanksha Kaul,  
Advocates**

**For 2<sup>nd</sup> Respondent:**

**Mr. M.G. Ramachandran and Ms. Poorva Saigal,  
Advocates**

**O R D E R**

**24.08.2018** The appellant 'M/s. Tata Power Delhi Distribution Limited' filed the information under Section 19(1)(a) of the Competition Act, 2002 (hereinafter referred to as the 'Competition Act') against 'NTPC Ltd.' (opposite party –respondent herein) alleging contravention of the provisions of Section 3 and 4 of the Competition Act. The matter having closed without any investigation by the Director General in terms of Section 26(2) of the Competition Act, the present appeal was filed.

During the pendency of the appeal, it was informed that the parties are negotiating for the settlement and therefore, the case was adjourned.

Mr. Vikas Singh, learned Senior Counsel appearing on behalf of the appellant submits that the respondent – ‘NTPC’ has already allowed the appellant to exit from the five of the plants, which are as follows:

<b>S.NO.</b>	<b>Name of Plant</b>	<b>Date of PPA</b>	<b>Exit</b>
1.	Anta Gas Power Station II	12.02.1999	Exit allowed by NTPC Vide Affidavit dated <b>23.03.2018</b>
2.	Auriya Gas Power Station II	12.02.1999	Exit allowed by NTPC Vide Affidavit dated <b>23.03.2018</b>
3.	Gidderbaha TPS	28.12.2010	Exit allowed by NTPC Vide Affidavit dated <b>23.03.2018</b>
4.	Bilhaur TPS	28.12.2010	Exit allowed by NTPC Vide Affidavit dated <b>23.03.2018</b>
5.	Unchahar TPS	03.03.2011	Power allocated to State of Uttar Pradesh (MOP letter <b>11.04.2018</b> )

This is also accepted by Mr. M.G. Ramachandaran, learned counsel appearing on behalf of Respondent No. 2 – ‘NTPC’. Insofar as the remaining three plants are concerned, it is stated that a joint application on behalf of the ‘Tata Power Delhi Distribution Limited’ (TPDDL) and ‘NTPC Limited’ (NTPC) has been prepared, a copy of which is signed by both the learned counsel for the Appellant and the 2<sup>nd</sup> Respondent, relevant portion of which reads as under:

“4. *TPDDL and NTPC record the following terms in regard to the three generating stations of NTPC, namely Meja Urja Vidyut Power Station Stage I; Tapovan Vishnugad Hydro Electric Plant, without prejudice to their rights and contentions in the above mentioned proceedings:*

- (a) *In regard to Meja Urja Vidyut Power Station Stage-I, the commissioning activities of Unit-1 are in advanced stages and is expected to achieve commercial operation by 31.3.2019 barring any Force Majeure Event that may occur in future;*
- (b) *As regard Tapovan Vishnugad Hydro Electric Project, the NTPC has informed TPDDL that the same is expected to achieve commercial operation by 31.3.2021 barring any Force Majeure condition that may occur.*
- (c) *Further, in regard to Meja Urja Vidyut Power Station Stage-I (1320 MW), Ministry of Power, Government of India vide its letter dated 5.10.2010 allocated 76 MW TO THE Delhi utilities including TPDDL. However, at the request of the TPDDL, an alternative buyer was found, namely Uttar Pradesh Power Corporation Limited (UPPCL) and the matter is pending before the Central Government (Ministry of Power) for re-allocation of the capacity to UPPCL. Since UPPCL has expressed its willingness to offtake the capacity, earlier allocated to the TPDDL, upon the Central Government approving the reallocation, for all*

*intents and purposes, UPPCL shall become the purchaser, in place of the TPDDL and the TPDDL shall have no obligation thereafter.*

- (d) *As regards Tapovan Vishnugad Hydro Electric Project (520 MW), Ministry of Power, Government of India vide its letter dated 25.03.2013 had allocated 53 MW to the Delhi Utilities including the TPDDL, without prejudice to its rights and contentions, the NTPC also agrees that it will make efforts with the Central Government (Ministry of Power) for substitution of allocation of power from Tapovan Vishnugad Hydro Electric Project to other interested Procurers so as to relieve TPDDL to the extent possible from the obligations under the Power Purchase Agreement dated 5.11.2010 entered into by TPDDL in respect of the Tapovan Vishnugad Hydro Electric Project (520 MW) and on such re-allocation, the TPDDL shall have no obligation thereafter.*
- (e) *Both parties shall be at liberty to file such proceedings before the competent forum in accordance with the applicable law, as either of them may consider appropriate for necessary*

*directions, in regard to the aspects mentioned in (a) to (d) above;*

- (f) *As regards Lata Tapovan Hydro Electric Project, TPDDL and NTPC shall jointly approach the Central Government (Ministry of Power, Government of India) for re-allocation and surrender of TPDDL's share to other procurers in relation to the Power Purchase Agreement dated September 09, 2009 entered into between NTPC and TPDDL with respect to Lata Tapovan Hydro Electric Project in accordance with the policies of the Government of India and on such re-allocation, the TPDDL shall have no obligation thereafter."*

In view of the settlement reached between the parties, no further order is required to be passed, except to direct the parties to act in 'terms of settlement' as noticed and quoted above, which should be treated to be direction of the Appellate Tribunal to both the parties.

The appeal stands disposed of with the above observations.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/uk/.