



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17**

No. F.11(1201)/DERC/2014-15/

**Petition No. 01 of 2010.**  
**Petition No. 02 of 2010**  
**and**  
**Petition No. 03 of 2010**

**In the matter of:      Refund of balance of consumer contribution (Remand back matter)**

**Tata Power Delhi Distribution Ltd. & Ors.**

**....Petitioners**

**Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson**

**ORDER**

(Date of Order: 05.12.2019)

1. The instant Petitions are in respect of refund of balance of consumer contribution on the Deposit Schemes executed by the Discoms during the past
2. The background of the case is as under:-
  - a. In the year 2009, it came to the notice of the Commission that the DISCOMs have not refunded the balance/unspent of consumer contribution to the respective consumers in respect of capitalized deposit work.
  - b. The Commission Vide its letter dated 03.12.2009 given the following directions to the DISCOMs;
    - (i) The DISCOMs shall finalize the accounts of the deposit works already executed by them and approved by the Electrical Inspector (wherever applicable) and refund the amounts due to the agencies on whose behalf the work has been carried out by the DISCOMS within a period of one month of energization.
    - (ii) The DISCOMs shall send reconciled account to all such consumer and refund them the due amount, along with penal interest of 12% per annum. The interest will be to the account of DISCOMs only and cannot be booked to ARR because this has become payable because of their fault.
    - (iii) In all future cases, the accounts be finalized immediately after completion of works and refunds made to the consumers within three months of energization. A quarterly report shall be submitted to the Commission in this regard in the format enclosed.

- c. Aggrieved by the aforesaid order regarding refund of the unspent consumer's contribution, the DISCOMs filed petition No. 1 of 2010, 2 of 2010 and 3 of 2010 before the Commission in which the main plea of the DISCOMs was that the Commission in its various orders had considered the entire consumer's contribution as "means of finance" and therefore, no such amount is available with them to refund to the respective consumer.
- d. The Commission vide its order dated 11.03.2014 in the aforesaid appeals observed that the consumer contribution was considered as "a source of finance" by the Commission for the capital expenditure schemes as mentioned in the tariff order dated 26.06.2003 as well as later tariff orders issued by the Commission. However, it was never expressly permitted that the unspent consumer contribution be retained by the DISCOMs. Since, it was never brought to the knowledge of the Commission by the DISCOMs that they are retaining the balance consumer contribution and not refunding it back to the consumers who deposited the money for their respective deposit works this practice was not acceptable and legally untenable. Consequently, the Commission directed the DISCOMs that after the work is completed the amount is to be reconciled and the consumer is to be informed and excess amount has to be refunded along with interest @ 12% p.a. from the date of completion of work as per the certificate from Electrical Inspector. Further, the Commission also directed the respondents to comply with the above orders and submit a compliance report to the Commission within four weeks from the date of this Order.
- e. Aggrieved by the Order dated 11.03.2014, the DISCOMs filed appeal No. 109, 110 and 111 of 2014 before the APTEL against the Commission's order and Hon'ble APTEL vide judgment dated 23.02.2015 held that the Commission has been considering consumer contribution as means of financing the capital cost and if the unutilized consumers contribution has been utilized as means of financing for the tariff orders from FY 2002-03 onwards and corresponding relief has been given to the consumers in terms of retail supply tariffs, then the appellants are entitled to get consequential relief and the said unspent contribution amount be refunded by the appellants as per the Commission's order. The unspent consumer's contribution amount may be considered as expenditure in the future ARR of each of the DISCOMs. Accordingly, these matters were remanded to the Commission for giving liberty to the DISCOMs to furnish the accounts showing that the excess amount of consumer's contribution has been duly considered in the ARRs from FY 2002-03 onwards in reducing the retail supply tariffs. In that situation the Commission was further directed to hear the matter and pass the consequential order as it thinks fit and proper in the facts and circumstances of these matters.

- f. In view of the above, the remand back matter was heard in the Commission and was disposed of vide order dated 23.12.2015 wherein the Commission has directed the DISCOMs to arrive at the exact figure of the amount to be refunded to the respective consumers and from what date, further the DISCOMs have to come up with the details of balance of consumer contribution in each case and from which date it has to be refunded. The Commission also directed that this exercise should be completed within two months.
- g. In respect of the above directions TPDDL did not submit the desired information despite a lapse of about 4 months, whereas BRPL and BYPL vide letters dated 07.03.2016 and 17.03.2016, respectively gave the list of schemes only, without intimating whether refund is made or not. The Tariff Division vide letter dated 21.04.2016 again advised the DISCOMs to submit the final figures about the total liability only after payment of balance of consumer contribution along with interest within a month, supported by an Auditor Certificate reconciling with their audited accounts.
- h. Meanwhile, the Commission was in receipt of a letter from Sh. Shashi Ranjan Sinha, General Manager TAJSATs addressed to BRPL requesting for Refund of the excess contribution deposited by it against a scheme on 01.04.2007. It was decided that the DISCOMs should refund the unspent consumer contribution to the respective consumers immediately with interest as specified in the Commission's order dated 23.12.2015. The Commission has already ordered that the amount of unspent consumer contribution for the period from FY 2002-03 to FY 2006-07 shall be adjusted into the ARR of the DISCOMs based on the refund made by the DISCOMs to the respective consumers so that the amount of interest can be finalized up to the date at which such refund is processed and credited to the consumers account. With regard to this a letter dated 12.01.2017 was forwarded to the DISCOMs for compliance of the Commission's order for expeditiously performing the refund of the unspent consumer contribution to the respective consumers. Also, a letter was sent to BRPL for compliance of the Commission's order for refund in the case of TAJSATs expeditiously and the failure of the same will clearly attract action under Section 142 of the Electricity Act, 2003.
- i. The Petitioners BRPL and BYPL filed Appeal No. 103 of 2017 and 104 of 2017, respectively in APTEL against the abovementioned letter dated 12.01.2017 stating that the Commission has failed to implement the APTEL's judgment dated 23.02.2015 in Appeal nos. 109, 110 and 111 of 2014.
- j. The APTEL in its judgment dated 15.05.2017 in Appeal No. 103 of 2017 and 104 of 2017 has given the following directions:

*"However, we once again direct the State Commission (DERC) to examine the submissions made by the Appellants with respect to consumers' contribution and give an opportunity to the Appellants to place their case on merits. Accordingly, we set aside the impugned letter dated 12.01.2017. Thus, all the issues are decided in favour of the Appellants.*

**ORDER**

*In view of our above conclusion, the Appeals are allowed and the impugned Order letter dated 12.01.2017 is set aside. The Appeal Nos. 103 of 2017, 104 of 2017 and IA Nos. 303 of 2017, 304 of 2017 are disposed of with no cost. We direct DERC to follow instructions given in this Tribunal's Judgment dated 23.02.2015."*

- k. On matter being remanded back to this Commission to hear the submissions of the Respondent DISCOMs and to give opportunity to them to present their case, in light of the APTEL's judgement dated 23.02.2015 the DISCOMs have been asked to present their case and to make submissions, the present petitions have been re-opened.
- l. Vide interim order dated 18.06.2018 the Commission has made the following observations:

*"it is made clear that the ARR of previous years upto FY 2015-16 have already been trued up and it would not be desirable to recast the ARR at this juncture. As much as it is related to the issue of arranging the finance for refund, it is for the DISCOMs to arrange the necessary finance. Once refund of the Consumer Contribution is made by the DISCOMs, the actual amount refunded shall be allowed in the subsequent true up of ARR.*

*The petitioners are directed to have a meeting with the officers of the Commission within four weeks to sort out the issues relating to the amount of refund etc."*

- m. The Respondent DISCOMS against the interim order dated 18.06.2018 appealed before the Hon'ble APTEL on the ground that the interim order is issued in the Disposed of Petitions.
3. With the unfolding of events, the case which was earlier in respect of refund of balance of consumer contribution only has now involves so many issues. The issue of refund of balance of consumer contribution is settled and the Respondent DISCOMs have agreed to pay, however, the contention is only regarding treatment in ARR, because as per the Respondent DISCOMs, the unspent/balance of consumer contribution has been considered as means of finance in ARR for other capital works.

4. In view of the forgoing, following questions has to be decided by the present petition:
- I. Whether present proceeding in Petition No. 01,02 & 03 of 2010 are in respect of Petitions disposed of;
  - II. Whether DISCOMs are liable to pay balance/unspent of consumer contribution in respect of capitalized assets or not;
  - III. What should be the mechanism for the Respondent DISCOMs to recover the unspent consumer contributions in a situation when such unspent consumer contributions were treated as 'means of finance' for other capital projects.

The Issues have been deliberated in succeeding paragraphs.

**Issue No. I**

**Whether present proceeding in Petition No. 01,02 & 03 of 2010 are in respect of Petitions disposed of.**

5. This issue has cropped up because the Respondent Discom has raised the plea before Hon'ble APTEL that the Interim Order dated 18.06.2018 has been issued in the Disposed off Petition. The aforesaid contention of the Petitioner has been considered in light of the judgements dated 23.02.2015 and 15.05.2017 of Hon'ble APTEL. Vide judgement dated 23.02.2015, Hon'ble APTEL has directed the following:

*"The learned Delhi Electricity Regulatory Commission has been considering consumer contribution as means of financing the capital cost. The appellant's contention, that the unutilized portion of the consumer contribution was also used as means of finance for the capital works and accordingly regulated rate base from FY 2002-03 onwards was reduced and consumers got the benefit of lower tariff, has legal force which we accept. If the unutilized consumers contribution has been utilized as means of financing for the tariff orders from FY 2002-03 onwards and corresponding relief has been given to the consumers in terms of retail supply tariffs, then the appellants are entitled to get consequential relief and the said unspent contribution amount be refunded by the appellants as per the Commission's order. The unspent consumers contribution amount may be considered as an expenditure in the future ARR of each of the appellants / DISCOMs. These matters are fit to be remanded giving liberty to appellant's to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the annual revenue requirements from FY 2002-03 onwards in reducing the retail supply tariffs.*

*In view of the above, these appeals being Nos. 109, 110 and 111 of 2014 are hereby partly allowed and the common impugned order dated 11.03.2014 passed by the Delhi Electricity Regulatory Commission in Review Petition Nos. 1, 2 & 3 of 2010 is modified to the extent indicated above. The matters are remanded to the learned Delhi Electricity Regulatory Commission giving liberty to the appellant's / DISCOMs to furnish the accounts showing that the excess amount of consumers contribution has been duly considered in the ARR from FY 2002-03 onwards in reducing the retail supply tariffs. In that situation the Commission is further directed to hear the matter and pass the consequential order as it thinks fit and proper in the facts and circumstances of these matters. No order as to costs"*

6. The Commission proceeded as per the directions of the Hon'ble APTEL contained in the judgement dated 23.02.2015 and passed the order whereby the Respondent DISCOMs have been directed to provide details of unspent consumer contribution which had to be refunded to the respective consumers. In subsequent development, the Respondent DISCOMs approached the Hon'ble APTEL in respect of the letter, of this Commission whereby DISCOM was asked to refund unspent consumer contribution to one of the consumers namely Taj Sats Air Catering Ltd. or otherwise to face action u/S 142 of the Electricity Act, 2003 for non-complying the order of the Commission. The Hon'ble APTEL vide judgement dated 15.05.2017 remanded back the matter to the Commission and directed DERC to follow the instructions given in judgement dated 23.02.2015. Hon'ble APTEL had held the following:

*"14.6 that the Commission has failed to consider that the unutilized portion of the consumers contributions, till date, is no longer retained by the Appellants but used in tariff for capital investment financing on en-bloc basis and the benefit of these contributions had therefore been passed on to the consumers through tariff. Further, while determining the ARR of each of the Appellants had the Commission preferred to consider only the portion of the consumers deposits to the extent utilized, instead of utilizing the unutilized portion on a global basis towards financing of capital investment en-bloc, the Appellant would have refunded the unutilized portion of the contribution to the concerned consumer."*

7. As may be seen from the aforesaid that the Commission has to examine the submissions made by the Appellant and to give opportunity to the appellants to place their case on merits, and therefore the present petitions No. 01, 02 and 03 of 2010 have been reopened. Therefore, it is not correct to plead that the Commission has issued directions in the disposed of petitions. It is also to be noted that as per the directions of the Hon'ble APTEL, the Respondent DISCOMs had to make submissions for consideration of the Commission, which is possible through the present petition only, moreover, when hearing in the present petition was called for, the Respondent DISCOMs nowhere raised the issue that this is the disposed of petition. Accordingly, through the Interim Order dated 18.06.2018 the DISCOMs had been asked to furnish details/submissions.
8. Therefore, the Interim Order dated 18.06.2018 has been issued in the Petitions, which have been reopened consequent to the remanding back the issue to the Commission by Hon'ble APTEL.

## **ISSUE NO. 2**

### **Whether DISCOMs are liable to pay balance/unspent of consumer contribution in respect of capitalized assets or not**

9. From the submissions made by the DISCOMs as well as from the judgement of Hon'ble APTEL dated 23.02.2015 and 15.05.2017 there is no dispute that the balance/unspent consumer contributions in respect of capitalized assets have to be refunded to the respective consumers. This is more because it is an amount paid by the consumer towards capital work which cannot be used for any work

other than for which it was paid. The only plea of the DISCOMs is that unspent/balance of consumer contribution of capitalized assets were treated as 'means of finance' for other capital work and therefore, they are left with no such unspent/balance of consumer contribution with them and unless provided in ARR, it will be difficult for DISCOMs to refund the same. It was the duty of the DISCOMs to refund the unspent/balance of consumer contribution to the respective consumers after capitalization of assets and thereafter balance of consumer contribution would have been reported to the Commission to be treated as 'means of finance'. This had to be done without any direction from the Commission because keeping the amount from a person and using it for any other purpose without his consent is against the basic principles of Law. Moreover, the DISCOMs had also failed to submit before the Commission the segregated amount of the consumer contribution, one in respect of capitalized assets and other in respect of capital projects in progress.

10. Nonetheless, for whatsoever reason, as the unspent of consumer contribution has been considered as means of finance and the plea of the Respondent DISCOMs has been considered that they are not left with the amount of which they have to return/refund to the respective consumers, the issue has been considered in the subsequent para.

### **ISSUE No. 3**

**What should be the mechanism for the Respondent DISCOMs to recover the unspent consumer contributions in a situation when such unspent consumer contributions were treated as 'means of finance' for other capital projects.**

11. Now it has been settled that the Respondent DISCOMs has to refund the unspent of consumer contribution towards the capitalized assets to the respective consumers and also that such amount has been considered as means of finance for other capital work, the issue for deliberation is that how the demand of the Respondent DISCOMs for recasting of previous ARR's be resolved. The facts are very simple that the DISCOMs has to refund the unspent consumer contributions and to get it back in ARR. Whatever amount of consumer contribution is refunded, will be recovered by the DISCOMs through ARR and truing up.
12. The Hon'ble APTEL vide Judgement dated 25.05.2017 has given following direction to DERC:

*"We direct DERC to follow instructions given in this Tribunal's Judgment dated 23.02.2015."*

And whereas Hon'ble APTEL vide judgment dated 23.02.2015 has held that *"If the Commission has been considering consumer contribution as means of financing the capital cost and if the unutilized consumers contribution has been utilized as means of financing for the tariff orders from FY 2002-03 onwards and corresponding relief has been given to the consumers in terms of retail supply tariffs, then the appellants are entitled to get consequential relief and the **said unspent contribution amount be refunded by the appellants as per the Commission's order. The unspent consumer's contribution amount***

**may be considered as expenditure in the future ARR of each of the DISCOMs.**  
*These matters are fit to be remanded giving liberty to the appellants to furnish the accounts showing that the excess amount of consumer's contribution has been duly considered in the ARRs from FY 2002-03 onwards in reducing the retail supply tariffs. ....*

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*..... In that situation the Commission is further directed to hear the matter and pass the consequential order as it thinks fit and proper in the facts and circumstances of these matters."*

13. In compliance to the Hon'ble APTEL's Judgement dated 25.05.2017, and as per the instructions of Hon'ble tribunal judgement dated 23.02.2015, the Commission vide Order dated 24.10.2017 directed the DISCOMs to provide the exact figure of the amount to be refunded to the respective consumers with the date from which it has to be refunded along with the provision of relevant tariff orders in which it was considered as means of finance. The submissions of the DISCOMs that unspent/balance of consumer contribution has been utilized as means of finance and therefore, in the event of refund of such amount, the DISCOMs are entitled for such amount with the consequential relief has also been considered. Accordingly, vide the Interim Order dated 18.06.2018, it was simply directed that:

*"Once refund of the Consumer Contribution is made by the DISCOMs, the actual amount refunded shall be allowed in the subsequent true up of ARR. The petitioners are directed to have a meeting with the officers of the Commission within four weeks to sort out the issues relating to the amount of refund etc."*

14. Against the aforesaid Order dated 18.06.2018, the DISCOMs appealed before the Hon'ble APTEL, which is pending adjudication.
15. The only issue which is vehemently contested by the DISCOMs is about treatment and recovery of balance of consumer contribution, in the event of refund to the concerned consumer, as the same had been considered as means of finance in respective ARR and therefore, is no more available with them. It is to be understood that in the event of payment of balance of consumer contribution to the concerned consumer, the recovery by the DISCOM can be made through future ARR only. This has also been the observation of Hon'ble APTEL, as already stated in para 11 above. The contention of the DISCOMs that ARR should be recasted at first before refund of consumer contribution would be meaningless because ultimately they can get the amount only in future tariff and truing up. It would be utterly misconceived and futile exercise to recast the previous ARR's because tariff cannot be modified retrospectively therefore, it would be only an academic exercise with so much complexities and uncertainties and the actual re-imbursement can be done through future ARR only as has been correctly directed by the Hon'ble APTEL. It will be always prudent on part of the Respondent DISCOMs to refund the balance of consumer contribution first and then seek claim of consumer contribution amount with admissible consequential relief in future ARR and truing up.



16. In the light and spirit of the directions of the Hon'ble APTEL in judgment dated 23.02.2015 that the said unspent contribution amount be refunded by the Petitioner DISCOMs as per the Commission's order and in the event of unspent consumers' contribution utilized as means of financing for the tariff orders from FY 2002-03, the Petitioner DISCOMs are entitled to get consequential relief in the future ARR; it is directed that the Petitioner DISCOMs shall refund the balance of unspent/balance consumer contribution in respect of the capitalized assets to the respective consumers and file claim before this Commission, which will be considered along with admissible consequential relief in future ARR. The directions of the Commission be complied within 2 months.
17. With the aforesaid directions the Petitions are disposed of.

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**