

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 143/2006

Coram:

- 1. Shri S. Jayaraman, Member**
- 2. Shri M.Deena Dayalan, Member**

DATE OF HEARING: 11.5.2010

DATE OF ORDER: 25.5.2010

In the matter of

Petition under Section 79 (1) (f) of the Electricity Act, 2003.

And in the matter of

Indraprastha Power Generation Company Ltd, New DelhiPetitioner
VS	
Haryana Vidyut Prasaran Nigam Ltd, PanchkulaRespondents

The following were present:

1. Ms. Swapna Seshadri, Advocate, IPGCL
2. Shri Sanjay Kumar Sharma, IPGCL
3. Shri R.K.Yadav, IPGCL
4. Shri Pratham Kant, HVPNL
5. Shri B.K.Ashta, HVPNL

ORDER

The petitioner has made this petition under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (the Act) for adjudication of disputes arising out of the petitioner's claim against the respondent for outstanding O&M expenses and variable charges in respect of Indraprastha power station (hereinafter called "the generating station") located in the National Capital Territory of Delhi. .

2. The generating station owned, operated and maintained by the petitioner consists of three units of 62.5 MW each, which was developed under an arrangement between the Delhi Electricity Supply Undertaking (DESU), (the predecessor in title to petitioner) and Haryana State Electricity Board (HSEB) (the predecessor in title to respondent) where under, HSEB contributed one-third of capital cost and in consideration thereof became entitled for one-third of power generated from the generating station, on payment of proportionate O&M charges and variable charges. The petitioner succeeded DESU/DVB with effect from 1.7.2002 and since then had supplied 839.50 million units till 30.9.2006.

3. The O&M cost and variable charges relating to the power supplied (839.50 MUs) by the petitioner worked out to Rs 241.50 crore, against which the respondent paid Rs 177.34 crore, and the outstanding balance was Rs 64.16 crore, as on 30.9.2006. The respondent refused to pay the said amount and accordingly, disputes and differences have arisen between the parties. Hence, the present petition.

4. In its reply, the respondent raised the preliminary issue of jurisdiction of the Commission to adjudicate the dispute. The Commission by its order dated 15.12.2008 overruled the objection of the respondent and admitted the petition as under:

"8. The applicant is a company registered under the Companies Act, 1956. The applicant has placed on record a copy of the transfer scheme notified by the Government of NCT of Delhi. The transfer scheme does not give any indication that the respondent holds any shares in the applicant company. On the contrary, it is shown that entire paid up share capital of Rs.180 crore is held by Delhi Power Company Ltd., the holding company. Even if it is accepted that the respondent has share in the applicant company, law recognizes commercial transactions between a company and its shareholders. Therefore, supply of electricity by the applicant company to NCT of Delhi and State of Haryana is recognized by law. It logically follows that the applicant, as a company, has or has otherwise entered into a composite scheme for generation and sale of electricity in more than one State. The applicant thus falls within the ambit of clause (b) of sub-section (1) of Section 79 of the Act. Therefore, the present dispute raised by the applicant is referable to clause

(b) of sub-section (1) of Section 79 and is to be adjudicated by the Commission under clause (b) thereof since the dispute involves the generating company. Accordingly, the preliminary objection by the respondent in regard to maintainability of the application on the ground that the dispute relates to issues involving co-investment/partnership projects is not sustainable and is over-ruled."

5. Aggrieved by the said order, the respondent filed Appeal (Appeal No.65/2009) before the Appellate Tribunal for Electricity (Appellate Tribunal) and the hearing of the petition by the Commission was adjourned due to the pendency of the said appeal.

6. During the hearing of the appeal on 4.1.2010, it was informed by the parties to the Appellate Tribunal that a settlement had been arrived at to resolve the disputes /difference between the petitioner and the respondent. The Appellate Tribunal by its order dated 4.1.2010, disposed of the appeal as under:

"At last, both the counsel have reported that a settlement has been arrived at and the acceptance of the settlement proposal has been approved by the (Haryana) Cabinet in the last week of December, 2009. The above development has been intimated to the Appellant by Respondent No. 2 through letter dated 01.01.2010. Therefore, it is appropriate to dispose of this Appeal in terms of the settlement reported through the letter dated 01.01.2010. Accordingly, the same is disposed of.

It is represented by the learned counsel for the Appellant that one more Petition from which the main Petition in this Appeal has arisen is pending before the Central Commission. It is open to the parties to intimate the Central Commission about the disposal of this Appeal.

In view of the above, both this Appeal as well as I.A. No. 169 of 2009 are disposed of."

7. The above order was brought to the notice of the Commission during the hearing on 7.1.2010 and the Commission directed the parties to file the relevant details of the settlement arrived at by the parties.

8. In accordance with the above directions, the petitioner by affidavit dated 8.3.2010, has submitted that after various deliberations and discussions, the respondent vide its letter dated 17.9.2009 had agreed to the settlement of the outstanding dues for

the respondents 1/3rd share of power in Unit. Nos. 2, 3 and 4 of the generating station on the terms and conditions mentioned therein. The petitioner by its letter dated 1.1.2010 has conveyed its acceptance to the settlement proposed by the respondent. It has been submitted that the respondent has paid an amount of Rs 103.85 crore (after deduction of Rs 2.4 crore as TDS) to the petitioner, on 5.2.2010, as part payment of the settlement. The petitioner has further submitted that certain amounts payable by the respondents in terms of the settlement are still outstanding. These amounts relate to the reimbursement of taxes and cess, energy bills for the months of September, 2009 to November, 2009, dues payable on account of revision of tariff by DERC. The petitioner has also sought a direction to the respondent to clear all outstanding dues.

9. During the hearing on 11.5.2010, the learned counsel for the petitioner submitted that the petitioner and the respondent are in the process of final settlement of the outstanding dues and prayed for an adjournment of the hearing of the petition.

10. We find that the respondent has cleared the outstanding dues and certain incidental charges remain to be cleared. Since the parties have amicably settled their disputes, we find no reason to keep the petition pending. Accordingly, the petition stands disposed of in terms of the settlement between the petitioner and the respondent. We hope that both the petitioner and the respondent will amicably settle the outstanding amounts. However, liberty is granted to the petitioner to approach the Commission in case of non payment of the outstanding amounts in terms of the settlement, by the respondent.

Sd/-
M.DEENA DAYALAN

Sd/-
S.JAYARAMAN

(MEMBER)

(MEMBER)