

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2012

Sub: Petition under Section 79 (1) (b), (c) and (f) under the Electricity Act, 2003 and seeking payment of Rs. 2,89,41,174/- as pending trading margin dues payable to PTC India Ltd., under power Sale Agreement dated 19.6.2009 executed between Haryana Power Purchase Centre, on behalf of Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Ltd. along with interest @ of 1.25% per month from date of payment.

Date of hearing : 17.4.2012

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S. Verma, Member

Petitioner : PTC India Limited, New Delhi

Respondents : Haryana Power Purchase Centre
Jammu and Kashmir State Power Development Deptt.

Parties present : Shri Atul Nanda, Sr. Advocate, PTC
Shri Ravi Prakash, Advocate, PTC
Shri Varun Pathank, Advocate, PTC
Shri Aditya Dewan, Advocate, PTC

Record of Proceedings

Through this petition, the petitioner PTC India Limited has prayed as under:

- (a) Direct the HPCC to pay Rs. 2,89,41,174/- towards the trading margin dues of the petitioner accumulated till date in accordance with Clause 2.2.2 of Schedule B of the PSA along with an interest of 1.25% per month from the date of payment;
- (b) Direct HPCC to honor its obligations and make all payment of trading margin payable to PTC in accordance with PSA; and
- (c) Award pendente lite interest at 18% p.a.

2. The learned senior counsel for the petitioner submitted that Hon`ble Commission has the power to adjudicate the disputes raised by an electricity trader and in the alternative that the power to regulate over an aspect of the matter, in itself carries the power to adjudicate over disputes which arises therefrom. Referring the para 111 of Supreme Court Judgment dated 6.5.2009 in *Civil Appeal No. 3510-11 in Tata Power Co. Vs. Reliance Energy Limited*, the learned counsel submitted that while dealing with the powers of the State Commission under Section 86 (1) (b) of the Electricity Act, 2003, Hon`ble Supreme Court held that the power to regulate would include the power to adjudicate upon disputes.

3. Learned senior counsel further submitted that electricity traders and trading would very much come within the regulatory and adjudicatory jurisdiction of the Commission. One of the key legislative intendments behind enactment of the Electricity Act, 2003 was the provision for and inclusion of electricity trading and open access under the ambit of the Act and consequently this Commission. Referring the Statement of Objects and Reasons of the Act, he submitted that a bird eye view of the various provisions of the Act would reveal that the Commission can exercise jurisdiction over almost every aspect of electricity trading and therefore, it must follow as a *sequiter* that the Commission would have jurisdiction to adjudicate upon disputes raised by or involving an electricity trader. Otherwise, there would be an anomalous position that when it comes to numerous aspects such as grant and revocation of a trading licence, development of the trading market, the technical requirement and capital adequacy for being an electricity trader, and investigation into the affairs of the trading company etc. Therefore, Commission would have jurisdiction to adjudicate the disputes.

4. Learned Senior Counsel also submitted that the Commission has jurisdiction to decide the matter in terms of its power under Section 79 (1) (c) read with 79 (1) (f) of Act. In this connection, Senior Counsel placed reliance on paras 18 and 19 of *K. Ramanathan Vs. State of Tamil Nadu-[(1985) 2 SCC 116]*. He submitted that Hon`ble Supreme Court in the Constitution Bench Judgment in *PTC India Limited Vs. CERC [(2010) 4 SCC 603]* in para 17 held that the Act is an exhaustive code on all matters concerning electricity and Regulatory Commissions have a mandate to monitor trading transactions continuously and ensure that the traders do not indulge in profiteering in case of market failure. He submitted that under Section 79 (1) (f) of the Act, the Commission has jurisdiction to adjudicate disputes involving generating companies or transmission licensees. In the present case, the Respondent No. 2 is a generating company from whom the power is being procured by the petitioner for the purpose of inter-State transmission of electricity.

5. The learned senior counsel prayed for three weeks time to file its written submissions on the question of 'maintainability' of the petition.

6. The Commission accepted the prayer and granted time to the petitioner to file its written submissions on or before 11.5.2012.

7. Subject to above, order in the petition was reserved on the question of maintainability.

By Order of the Commission
Sd/-
(T. Rout)
Joint Chief (Law)