

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 154/MP/2015

Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 seeking adjudication of dispute between Adani Power Limited and Gujarat Urja Vikas Nigam Limited regarding the payment for electricity supplied by Adani Power Limited prior to Scheduled Commercial Operation Date.

Date of hearing : 6.11.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : Adani Power Limited

Respondent : Gujarat Urja Vikas Nigam Limited

Parties present : Shri Amit Kapoor, Advocate, APL
Shri M.G. Ramachandran, Advocate, GUVNL
Shri Shubham Arya, Advocate, GUVNL
Ms. Poorva Saigal, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Shri S.K. Nair, GUVNL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed seeking direction to the respondent, Gujarat Urja Vikas Nigam Limited to refund ₹ 227.01 crore along with the interest (till the date of payment) towards the electricity supplied to the respondent prior to Scheduled Commercial Operation Date in pursuance of the judgment of the Hon`ble Appellate Tribunal for Electricity (ATE) dated 12.3.2015 in Execution Petition No. 1 of 2014. Learned for the petitioner further submitted as under:

(a) In the meeting held on 31.12.2010, it was agreed between the parties that the petitioner would sell electricity to third party in consultation with the respondent to ensure fair price discovery, and in the event dispute is decided in favour of the petitioner, the respondent would return the excess amount, realized over and

above the PPA`s tariff. However, the respondent compelled the petitioner to supply 1250.86 MUs of electricity to it and deprived the petitioner from selling electricity in the open market over and above the rate of the PPA.

(b) On 1.2.2014, the respondent made a part payment of only ₹ 135.20 crore.

(c) Gujarat Electricity Regulatory Commission (GERC) vide its order dated 21.10.2011 in Petition No. 1093 of 2011 held that the petitioner has no obligation to supply the contracted capacity to the respondent prior to the SCOD under the PPA.

(d) Aggrieved by the said order dated 21.10.2011, the respondent filed an appeal before ATE. ATE vide its judgment dated 4.10.2012 in Appeal No. 185/2011 upheld GERC order dated 21.10.2011. The respondent challenged the judgment of ATE before the Hon`ble Supreme Court with interim prayer to stay the judgment of ATE. The Hon`ble Supreme Court vide its interim order dated 2.5.2013 dismissed the stay application.

(e) Subsequently, the petitioner filed Execution Petition before ATE. ATE vide its judgment dated 12.3.2015 in Execution Petition No. 1 of 2014 dismissed the Execution Petition and granted liberty to the petitioner to seek remedy at the appropriate forum.

(f) The Commission vide order dated 16.10.2012 in Petition No.155 of 2012 has already held that the petitioner has a composite scheme for generation and sale of electricity in more than one State in terms of Section 79 (1) (b) of the Electricity Act.

(g) Learned counsel requested the Commission to issue notice to the respondent.

2. Learned counsel for the respondent submitted as under:

(a) ATE vide its judgment dated 12.3.2015 granted liberty to the petitioner to approach “appropriate forum” to seek remedy. However, in the present case, the Central Commission is not the appropriate forum.

(b) In terms of Section 79(1)(b) of the Electricity Act, 2003 the Commission can exercise jurisdiction to the extent of composite scheme for generation and sale of electricity in more than one State. A composite scheme has emerged

after the petitioner entered into an agreement with Haryana for supply of power and this Commission has the jurisdiction to adjudicate the disputes connected with the composite scheme.

3. After hearing the learned counsel for the petitioner, the Commission directed to issue notice to the respondent.
4. The Commission directed the petitioner to serve copy of the petition on the respondent immediately. The respondent was directed to file its reply by 20.11.2015 with an advance copy to the petitioner who may file its rejoinder, if any, by 4.11.2015.
5. The petition shall be listed for hearing on admissibility on 10.12.2015 at 2.30 P.M.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Law)**