

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 12/MP/2019
with IA No. 64/2019

- Subject : Petition under Sections 79 (1) (c), (f), (k) and other applicable provisions of the Electricity Act, 2003 in connection with the disputes and differences arising due to breach of Power Purchase Agreement dated 8.8.2005 entered between it and Nuclear Power Corporation of India Limited and allowing the claim for damages.
- Petitioner : MP Power management Company Limited
- Respondents : Nuclear Power Corporation of India Ltd. (NPCIL) & ors.
- Date of hearing : **6.8.2019**
- Coram : Shri P.K.Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S.Jha, member
- Parties present : Shri Ravi Sharma, Advocate, MPPMCL
Shri Narendra Hooda, Advocate, NPCIL
Ms. Shreya Sethi, Advocate, NPCIL
Shri Sandeep Sarwate, NPCIL
Shri Utpal Kumar, NPCIL
Shri Nirnay Gupta, Advocate, CSPDCL

Record of Proceedings

During the hearing, the learned counsel for the Respondent, NPCIL submitted that IA No. 64/2019 has been filed on the issue of maintainability of the Petition on the following grounds:

(a) As per Article 12 of the PPA dated 8.8.2005, the dispute between the parties shall have to be adjudicated by arbitration in terms of the Arbitration agreement entered into between the parties.

(b) The dispute between the parties arises out of a purely commercial contract and is not related to determination/ regulation of tariff. The dispute therefore does not fall within the ambit & scope of clauses (a) to (d) Section 79(1) of the 2003 Act. (*Commission's order dated 11.10.2017 in Petition No. 95/MP/2017 was referred to*).

(c) In terms of the Office Memorandum dated 22.5.2018 by Ministry of Heavy industries & Public Enterprises, GOI, the dispute shall be taken up for resolution through Administrative Mechanism for Resolution of CPSE disputes.

2. In response, the learned counsel for the Petitioner submitted as under:

(a) In terms of the judgment of the Hon'ble Supreme court in GUVNL vs Essar Power Ltd, the provisions of the Arbitration & Conciliation Act, 1996 will have no application and the present dispute shall be adjudicated by this Commission under section 79(1)(f) of the 2003 Act.

(b) The Office Memorandum dated 22.5.2018 relates to Department of Heavy Industries, GOI and does not apply to the present case.



(c) The disputes which can be dealt by the Commission for adjudication has been clearly mentioned in the judgment dated 1.7.2014 in Appeal No. 169/2013. The present dispute falls within the provisions of clauses (a) to (d) of Section 79(1) of the 2003 Act.

(d) Reply to the IA may be permitted to be filed.

3. The Commission after hearing the parties directed the Petitioner to file its reply to the IA on 'maintainability' on issues namely (i) jurisdiction of this Commission to adjudicate the dispute under section 79(1)(f) of the 2003 Act (ii) whether the dispute is of purely commercial nature falling within the ambit of Office Memorandum dated 22.5.2018 and (iii) whether the dispute falls within the scope of the Arbitration & Conciliation Act 1996 as per agreement entered into by the parties.

4. The Petitioner shall file its reply on or before **26.8.2019**, with advance copy to the respondent, who may file its rejoinder by **2.9.2019**. Subject to this, order in IA on 'maintainability' was reserved.

By order of the Commission

Sd/-
(B.Sreekumar)
Dy. Chief (Law)

