

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.139/MP/2022

- Subject : Petition seeking execution of the Order dated 5.11.2018 read with corrigendum dated 3.12.2018 passed by this Commission in Petition No. 159/MP/2017 and initiation of proceedings/action under Section 142, and Section 149 of the Electricity Act, 2003 read with Regulation 111 and Regulation 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against Respondent No. 1 i.e., Brihan Mumbai Electric Supply and Transport Undertaking for the noncompliance of the aforesaid order dated 05.11.2018 read with corrigendum dated 03.12.2018 passed by this Commission in Petition No. 159/MP/2017.
- Date of Hearing : **5.12.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL).
- Respondents : Brihanmumbai Electric Supply and Transport Undertaking (BEST) and Anr.
- Parties Present : Shri Aniket Prasoon, Advocate, JITPL
Shri Aman Sheikh, Advocate, JITPL
Shri Paritosh Bisen, Advocate, JITPL
Ms. Nikita Choukse, Advocate, BEST
Shri Akash Lamba, Advocate, BEST
Shri Venkatesh, Advocate, TPTCL
Shri Aditya Sharma, Advocate, TPTCL
Shri Vedant Chowdhary, Advocate, TPTCL

Record of Proceedings

At the outset, the learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking execution of the Commission's order dated 5.11.2018 read with the corrigendum dated 3.12.2018 in Petition No. 159/MP/2017 and for initiation or proceedings/ action under Sections 142 and 149 of the Electricity Act, 2003 against Respondent No.1, BEST for non-compliance with the aforesaid order dated 3.12.2018. Learned counsel mainly submitted the following:

- (a)The Respondent, BEST, has paid an amount of Rs. 1.81 crore to Respondent No.2, Tata Power Trading Company Ltd. (TPTCL) on 3.5.2023 after a considerable delay since the passing of the order dated 5.11.2018. However, in terms of the revised bill for an amount of Rs. 1.99 crore issued by the Petitioner in

furtherance of the orders of the Commission, an amount of Rs. 18 lakh is still pending on the part of the Respondent, BEST to be paid.

(b) BEST had filed an Appeal No. 3 of 2019 before the APTEL *inter alia* challenging the order dated 5.11.2018 passed by this Commission in Petition No. 159/MP/2017. Along with the Appeal, BEST had filed an I.A. No. 21 of 2019 seeking a stay of the order dated 5.11.2018 pending the disposal of the said Appeal. Vide order dated 2.9.2022 passed in I.A. No. 21 of 2019, the APTEL declined to stay the order dated 5.11.2018 and, accordingly, directed BEST to deposit Rs. 1.81 crore subject to the decision on the said Appeal.

(c) BEST filed a Review Petition No. 9 of 2022 before the APTEL seeking review of the order dated 2.9.2022. The APTEL, vide its order dated 28.9.2022 dismissed the Review Petition. The said order dated 28.9.2022 passed by the APTEL was further challenged before the Hon`ble Supreme Court vide Civil Appeal No. 314-317 of 2023. Vide order dated 1.2.2023, the Hon`ble Supreme Court dismissed the Appeals.

(d) In view of the above dismissal, BEST filed I.A. No. 447 of 2023 before the APTEL, *inter alia*, seeking clarification of the order dated 2.9.2022 passed by the APTEL and also permission to deposit the requisite amount in compliance with the said order. Vide order dated 17.4.2023, the APTEL observed that the order dated 2.9.2022 did not require any clarification and reaffirmed its earlier direction to BEST to deposit Rs. 1.81 crore with TPTCL.

(e) In terms of the directions given by the Commission vide its order dated 5.11.2018 (at para 36), to recover the differential amount due to the increase in the levy of Clean Energy Cess, the Petitioner was required to raise a revised bill in proportion to the coal consumed corresponding to the scheduled generation at normative parameters as per applicable tariff regulations or actuals, whichever is lower. Accordingly, the Petitioner has raised the revised bill for an amount of Rs. 1.99 crore in terms of the actual coal consumed which the BEST has denied to pay by contending that the initial disputed amount was Rs.1.81 crore.

(f) BEST, despite there being clear and precise direction stipulated in the final Orders i.e., to make payment of the differential amount towards the increase in CEC within 60 days from the date of the Order, BEST has wilfully and deliberately failed to honour the said claim raised by the Petitioner and TPTCL.

(g) In terms of Clause 7 of the Letter of Intent (LoI) dated 14.1.2016, the Petitioner is entitled to the Late Payment Surcharge (LPS) of 1.25% per month on account of the delay by BEST in honouring the invoices raised by the Petitioner in terms of the clear and precise directions incised in the final Orders. The Respondent, BEST vide its I.A. No.21 of 2019 in Appeal No. 3 of 2019 before the APTEL had also sought a stay on the wrongful levy of the LPS by the Petitioner. However, the order of the APTEL is silent on the aspect of the stay on the LPS and hence can be construed as denied by the APTEL.

(h) In terms of the above, Respondent, BEST is required to comply with the orders dated 5.11.2018 passed by this Commission in Petition No. 159/MP/2017 and accordingly, forthwith pay the differential amount of Rs. 18 lakh (in terms of the revised bill of Rs. 1.99 crore raised by the Petitioner) along with LPS of Rs. 2.37

crore in terms of the applicable law including specifically Clause 7 of the LOI dated 14.1.2016 to the Petitioner.

2. Learned counsel for the Respondent, BEST submitted that in compliance with the Commission's orders and the order of the APTEL dated 2.9.2022 passed in Appeal No. 21 of 2019, BEST has paid the entire differential amount of Rs. 1.81 crore as claimed by the Petitioner in its initial Petition. The Petitioner had not made any prayer for the payment of the LPS in its initial Petition i.e. Petition No.159/MP/2017. Moreover, no claim of Rs.1.99 crore was reflected to be paid to the Petitioner in the said order of the APTEL dated 2.9.2022. Learned counsel further pointed out that the Petitioner is claiming LPS with effect from 2016 and not from the date of the Commission's order and the principal amount as claimed by the Petitioner has already been paid. The Petitioner can not claim LPS in the execution Petition as the same was not part of the initial Petition filed by the petitioner.

3. In rebuttal, the learned counsel for the Petitioner submitted that from the date of orders of the Commission, the conduct of the Respondent, BEST was not to pay the amount as claimed by the Petitioner. Initially, BEST refused to carry out the reconciliation and thereafter used dilatory tactics in order to wriggle out of its obligations ensuing out of the final Orders i.e., to make payment of differential amount towards increase in CEC to the Petitioner. Vide the said order dated 5.11.2018, the Commission had directed to carry out reconciliation on account of the said claims and make the payments within 60 days from the date of order. The present Petition has been filed under Section 142 of the Act for the compliance of the said order of the Commission i.e. to undertake the reconciliation process for the determination of the actual principal amount on which LPS would be levied.

4. After hearing the learned counsel for the parties, the Commission permitted the parties to file their respective short written submissions, if any, within three weeks with a copy to the other side.

5. Subject to the above, the Commission reserved the matter for order.

By order of the Commission
SD/-
(T.D. Pant)
Joint Chief (Law)