

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.75/MP/2022

- Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003, read with the Letter of Intent dated 13.02.2021, and Bid Document dated 17.12.2020, thereby seeking directions from this Commission for quashing erroneous Compensation Bills/ Tax Invoices raised upon the Petitioners by the Respondent qua levy of alleged liquidated damages, and also to restrain the said Respondent from levying IGST on such liquidated damages, payment of illegally withheld amongst with applicable Delay Payment surcharge and amongst other consequential reliefs.
- Date of Hearing : **16.8.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : Jindal India Thermal Power Ltd. (JITPL) and Anr.
- Respondent : BSES Rajdhani Power Limited (BRPL)
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, JITPL
Shri Hemant Singh, Advocate, JITPL
Shri Biju Mattam, Advocate, JITPL
Ms. Ankita Bafna, Advocate, JITPL
Shri Pulak Srivastava, JITPL
Shri Buddy Rangandhan, Advocate, BRPL
Shri Hasan Murtaza, Advocate, BRPL
Shri Sameer Sharma, Advocate, BRPL

Record of Proceedings

During the course of the hearing, learned senior counsel for the Petitioner, JITPL, made detailed submissions on the aspects involved in the matter, namely, (i) calculation of liquidated damages due to the shortfall in supply of power on a fortnightly basis instead of a monthly basis as stipulated in the Letter of Intent/Bid documents, (ii) non-consideration of the declared capacity by the Petitioner on a monthly basis while calculating the liquidated damages, and (iii) levy of Integrated Goods and Services Tax (IGST) on the liquidated damages.

2. Learned counsel for the Respondent, BRPL, submitted that insofar as the levy of IGST on the liquidated damages is concerned, the circular of the Central Board of Indirect Taxes & Customs, Ministry of Finance, Govt. of India, as relied upon by the Petitioner, came to be issued only on 3.8.2022, i.e. after the deductions had been made by BRPL, and the action of BRPL levying IGST on the liquidated damages was in accordance with the numerous rulings of the Appellate Authority for Advance Ruling for GST. Learned counsel submitted that the amount of IGST collected on the liquidated damages had already been deposited with the Government. Learned

counsel submitted that since the quantum as well as the tariff for the quantum quoted by the Petitioners during the contract period was on a fortnightly basis and not on a monthly basis, each requisition will have its own implication in terms of billing, payment, compensation, etc. Learned counsel added that a similar principle has been adopted by BRPL in respect of other generators as well, and none of them have raised any objection thereto.

3. In response, learned counsel for the Petitioner pointed out that, as per the Petitioner, the imposition of the liquidated damages upon the Petitioner formed part of the tariff stream of the Respondent, and therefore, even without the circular dated 3.8.2022, which was only in the nature of clarification, the Respondent could not have levied IGST on such damages.

4. After hearing the learned counsel for the parties, the Commission permitted both sides to file their respective written submissions, if any, within two weeks with copies to the other side.

5. The Commission directed the parties to file the following details, on an affidavit, within three weeks:

(i) The Petitioner to furnish the details of daily availability declared as per LoI and additional daily availability declared beyond LoI, to the respondent, BRPL, for the period from 1.5.2021 to 15.9.2021.

(ii) The Petitioner to furnish the following day-wise information for the period from 1.5.2021 to 15.9.2021 :

Date	Installed Capacity	DC	Availability declared to Long Term and Medium Term beneficiaries	Availability declared to respondent (BRPL) w.r.t contracted capacity	Availability declared to respondent (BRPL) beyond the contracted capacity	Availability declared for Short term beneficiaries, other than Respondent (BRPL)

(iii) TPTCL to furnish the day-wise energy sold by JITPL in short term through TPTCL during the period from 1.5.2021 to 15.9.2021.

6. The matter remained part-heard and shall be listed for hearing on **25.10.2023**.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**