

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 85/MP/2022 alongwith IA No. 70/2022

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Punjab State Power Corporation Limited (PSPCL).

Respondents : Coastal Gujarat Power Limited (CGPL) and 9 Ors.

Petition No. 123/MP/2022

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Uttar Haryana Bijli Vitran Nigam Limited and Anr.

Respondents : Coastal Gujarat Power Limited (CGPL) and 8 Ors.

Petition No. 246/MP/2022 alongwith IA Nos. 8/2023 & 35/2023

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions in regard to the Power Purchase Agreement dated 22.4.2007 with Coastal Gujarat Power Limited.

Petitioner : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL).

Respondents : Coastal Gujarat Power Limited (CGPL) and 8 Ors.

Petition No. 107/MP/2023

Subject : Petition under Sections 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication of disputes and for directions to supply electricity under the contracted capacity of 1805 MW under the Power Purchase Agreement dated 22.04.2007 between Tata Power and GUVNL; compensation/damages for short-supply/non-supply; and for consequential reliefs including refund

Petitioner : Gujarat Urja Vikas Nigam Limited.

Respondents : Tata Power Company Limited and 7 Ors.



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

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, PSPCL HPPC & GUVNL
Ms. Poorva Saigal, Advocate, PSPCL & HPPC
Shri Shubham Arya, Advocate, PSPCL & HPPC
Ms. Reeha Singh, Advocate, PSPCL & HPPC
Shri Ravi Nair, Advocate, PSPCL & HPPC
Ms. Anumeha Smiti, Advocate, PSPCL & HPPC
Shri Sajan Poovayya, Sr. Advocate, TPCL
Shri Sanjay Sen, Sr. Advocate, TPCL
Shri Shreshth Sharma, Advocate, TPCL
Ms. Shubhi Sharma, Advocate, TPCL
Shri Neel Rahate, Advocate, TPCL
Shri Deepak Thakur, Advocate, TPCL
Ms. Raksha Agarwal, Advocate, TPCL
Ms. Mandakini Ghosh, Advocate, TPCL
Ms. Neha Dabral, Advocate, TPCL
Shri Basava Prabhu Patil, Advocate, MSEDCL
Shri Akash Lamba, Advocate, MSEDCL
Shri Gajendra Sinh, WRDLC
Shri Ashok Ranjan, WRLDC
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Ashabari Thakur, Advocate, GUVNL

Record of Proceedings

At the outset, learned senior counsels for TPCL submitted that, vide Record of Proceedings for the hearing dated 29.5.2023, the Commission had permitted the parties to explore the possibilities of settlement for the supply of power for a future period and, accordingly, had directed TPTCL not to take any coercive actions pursuant to its preliminary default notice issued to the procurers under the Power Purchase Agreement. Learned senior counsels further submitted that pursuant to the said direction, various meetings were held between the parties, but no consensus could be reached regarding the terms of the Supplementary Power Purchase Agreement (SPPA). Learned senior counsels further submitted that TPCL, vide its affidavit dated 14.8.2023 has already placed on record the terms of the SPPA being offered to the procurers. Learned senior counsels referred to the terms of the SPPA in detail and pointed out that notwithstanding its insistence on the HBA Index for FoB cost of coal in the past, TPCL has now, for the purpose of settlement, agreed to the lower of actual or Argus with a 5% premium derived price in Indian Rupees at the actual exchange rate. Learned senior counsels also pointed out that, vide Record of Proceedings for the hearing dated 29.5.2023, the Commission had also directed the parties to file the outcome of the conciliation process on an affidavit, and except for MSEDCL, none of the other procurers have filed any affidavit disclosing their stand / points of disagreement with the proposal of TPCL. Accordingly, the Respondents be

directed to file their respective affidavits indicating their position on the proposal of TPCL.

2. In response, learned senior counsel for HPPC, PSPCL, and GUVNL submitted that despite the various meetings held between TPCL and Procurers, the parties could not arrive at mutually agreeable terms of the SPPA, and their communications indicating TPCL's proposal was not acceptable to them are already on record along with the affidavit filed by TPCL. Learned senior counsel placed reliance on GUVNL's letter dated 10.8.2023 and pointed out that the terms and conditions offered by TPCL in the meeting dated 3.8.2023 were inferior to the conditions already offered/ agreed with the procurers. Learned senior counsel submitted that, as such, there is no need for them to file a counter affidavit indicating their views to TPCL's affidavit dated 14.8.2023. However, if the Commission so directs, they will file their affidavit in this regard. Learned senior counsel also submitted that since the conciliation efforts between the parties did not fructify, the Commission may take up the IA Nos. 37/2023 and 38/2023 filed by PSPCL and HPPC, respectively, seeking a stay on the preliminary default notice dated 12.2.2023 as well as the letter dated 12.5.2023 as issued by TPCL. Learned senior counsel submitted that they are pressing for an ad-interim relief at this stage itself and pointed out that one of the grounds raised in the said default notice is outstanding fixed charges for the supply under the Ministry of Power's Section 11 Directions, despite the fact that said aspect is pending before the APTEL, wherein the Commission's order dated 3.1.2023, on the subject matter of Section 11 Directions, has already been stayed by the APTEL subject to the procurers making payment of 50% of the total outstanding amount.

3. In response, learned senior counsels for TPCL opposed the grant of any stay on its preliminary default notice and/or subsequent letter at this stage. Learned senior counsels submitted that notices are yet to be issued on the IAs 37/2023 & 38/2023, and TPCL may be permitted to file its reply to the said IAs prior to considering the prayer of an ad-interim stay on the preliminary default notice as pressed by HPPC and PSPCL. Learned senior counsels also submitted that presently the Section 11 Directions are in force till 30.9.2023, and therefore, there will be no prejudice to the procurers if their prayer for an ad-interim stay is considered after TPCL files its reply to the IAs.

4. Learned senior counsel for MSEDCL in Petition No. 246/MP/2022 submitted that pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 29.5.2023, a meeting was held between TPCL and MSEDCL wherein the parties had extensively discussed the issue of signing the SPPA, including the underlying terms. However, the parties could not reach a consensus regarding the same. Learned senior counsel further submitted that in the said meeting, the parties also deliberated upon the payment of Rs. 88.99 crore, i.e. the amount that was adjusted by MSEDCL against the invoice raised by TPCL between 12.4.2022 and 5.5.2022 owing to MSEDCL's pending claim of Rs. 172.38 crore against TPCL (subject matter of Petition No. 246/MP/2022), and pursuant to the said deliberation, MSEDCL has already made the payment of Rs. 88.99 crore to TPCL upon it having furnished an undertaking that in case MSEDCL gets a favourable order in the judicial proceedings initiated by MSEDCL before the judicial forums in relation to the said amount, TPCL will return the said amount to MSEDCL. Learned senior counsel also pointed out that, insofar as the issue of LC/PSM is concerned, TPCL, vide its letter dated 15.5.2023 has already submitted that defect qua LC/PSM stands cured, and in

view of the above developments, TPCL's preliminary default notice dated 12.2.2023 to MSEDCL no longer survives.

5. Learned senior counsel for TPCL confirmed the submissions made by the learned senior counsel for MSEDCL and requested to take on record the statement that the preliminary default notice issued to MSEDCL stands withdrawn. Considering the above, the Commission disposed of IA No. 35/2023 filed by MSEDCL, *inter alia*, seeking a stay on the preliminary default notice dated 12.2.2023 read with the letter dated 4.5.2023.

6. Learned counsel for Rajasthan Discoms submitted that Rajasthan Discoms have also filed a similar Petition bearing Petition No. 185/MP/2023, which may also be taken up with the present batch of Petitions.

7. Considering the submissions made by the learned senior counsels for the parties, the Commission directed TPCL to file its reply in IA Nos. 37/2023 and 38/2023 within a week, with a copy to the Petitioners therein, who may file their rejoinder within a week thereafter. The Commission also directed TPCL to maintain the *status quo* in respect of its preliminary default notice and/or subsequent letters *qua* HPPC & PSPCL till the next date of the hearing. The parties are also directed to complete the pleading in these matters, including the Petition No. 185/MP/2023, as filed by Rajasthan Discoms within two weeks. The Procurers were also directed to file their respective affidavits indicating their stand on TPTCL's proposal under affidavit dated 14.8.2023 within a week in their respective petitions.

8. The Petitions along with allied IAs and Petition No. 185/MP/2023, will be listed for hearing on **13.9.2023 at 2.30 PM**.

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