

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/MP/2013

Subject : Petition under section 79 (1) (f) of the Electricity Act, 2003 for adjudication of the dispute between the Kanti Bijlee Utpadan Nigam Limited and Bihar State Power Holding Company Limited.

Date of hearing : 8.8.2013

Coram : Shri V.S.Verma, Member
Shri M. Deena Dayalan, Member

Petitioner : Kanti Bijlee Utpadan Nigam Limited

Respondents : Bihar State Power Holding Company Limited (BSPHCL) and others.

Parties present : Shri M. G. Ramachandran, Advocate, KBUNL
Shri D.G. Salpekar, NTPC
Shri Mohit kumar Shah, Senior Advocate, BSPHCL
Ms. Shilpi Shah, Advocate, BSPHCL
Shri R.P.Bhatto, Advocate, BSPHCL
Shri Khagesh Chaudhary, BSPHCL

Record of Proceedings

Learned counsel for the petitioner submitted that reply filed by the Bihar State Power Holding Company Limited (BSPHCL) has been received today and requested for two weeks time to file rejoinder to reply of BSPHCL, which was allowed.

2. Learned senior counsel for the BSPHCL submitted as under:

(a) In the present petition, the petitioner is only disputing on account of failure on the part of the respondent to pay the amount due to the petitioner for the periods from 12.11.2010 to 9.3.2011, 20.3.2010 to 30.3.2011 and 4.11.2011 to 29.3.2012.

(b) The petitioner raised bills amounting to ₹ 88.98 crore in the month of March/May 2012 out of which on 11.6.2012 BSPHCL paid ₹ 25.25 crore to the petitioner explaining the reasons for admitting only said amount. However, the petitioner chose not to resolve the dispute. In order to get the units commissioned/started for the benefit of the State, BSPHCL decided to pay 95% of the claimed disputed amount with prejudice to the discrepancies pointed out by it till final adjudication by the competent authority. subsequently, on 28.5.2013, 95% of the balance disputed outstanding amount has been paid to the petitioner. Thus, as on date 95% of the outstanding disputed amount already stands paid to the petitioner subject to the pending adjudication of the dispute.

(c) The petitioner company is a joint venture company of NTPC and BSEB. On 22.8.2006, BSEB and NTPC Ltd entered into PPA. Clause 2.2.1 of the PPA provides that entire power generated from the generating Station shall be allocated to BSEB and BSEB shall be required to pay all charges for this capacity. Further, clause 12.1.1 provides that all differences and disputes between the parties arising out of or in connection with the agreement shall be mutually discussed and resolved amicably within ninety days.

(d) The petitioner has shut down its plant for non-payment of dues and the purpose of handing over the plant and running by JV company has been frustrated.

(e) Instead of asking for the payments, the petitioner should have raised funds from market on the strength of NTPC balance sheet and the interest burden should have been shared between the petitioner and BSPHCL.

(f) Since present dispute is not covered under Section 79 of the Electricity Act, 2003 and there is no agreement on amount payable, the same needs to be resolved by an arbitrator in terms of clause 12.2.2 of the PPA.

(g) With regard to scheduling and despatch mechanism, BSPHCL shall be abide by all statutory provisions, Grid Code etc and same may also be discussed in the meeting.

3. In response, learned counsel for the petitioner submitted as under:

(a) The petitioner informed BSPHCL that unit-I is running at 30 MW present and likely to be under commercial operation within 10 days. The unit was under extensive R & M and the reasons for shut down mentioned by BSPHCL are not correct. The unit-II is also undergoing R&M presently.

(b) On several occasions, in the absence of funds the generating station went out of coal stock, which is essential to run a power plant, therefore, no business can run without adequate cash flow.

(c) Since the matter is connected to the petitioner's tariff which is determined by the Commission under 79 (1) (a) of the Electricity Act, 2003, the Commission is the appropriate Commission to resolve the dispute.

4. After hearing the parties, the Commission directed the petitioner to file rejoinder to the reply of BSPHCL, with an advance copy to the respondent by 23.8.2013

5. The Commission directed the petitioner and BSPHCL to convene a meeting with senior level officials at the level of Director (Commercial), KBUNL and CMD, BSPHCL to resolve the dispute regarding non payment of dues within a period of four weeks.

6. The Commission also directed the parties to submit the report, on affidavit, on or before 10.9.2013.

7. The petition shall be listed for hearing on 24.9.2013.

By Order of the Commission

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