

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 393/MP/2018

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 to establish the payment security mechanism in favour of the Petitioner.

Petitioner : JSW Hydro Energy Limited (JSW)

Respondents : PTC India Ltd. & ors.

Date of Hearing : 2.7.2019

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member
Shri I.S. Jha, Member

Parties present : Shri Aman Anand, Advocate, JSW
Shri Aman Dixit, Advocate, JSW
Shri Suraj G., Advocate, JSW
Shri Anurag Agarwal, JSW
Shri Parag Tripathi, Senior Advocate, PTC
Shri Ravi Kishore, Advocate, PTC
Ms. Rajshree Choudhary, Advocate, PTC
Shri K.K.Mishra, PTC
Ms. Swapna Seshadri, Advocate, PSPCL
Ms. Ritu Apurva, Advocate, PSPCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner made submissions on maintainability of the petition on 'jurisdiction' and on 'merits' as under:

(a) Since the Petitioner has a composite scheme for generation and sale of electricity in more than one State, the dispute raised by the Petitioner falls within the scope and jurisdiction of this Commission under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003.

(b) The APTEL in its judgment dated 20.7.2012 in JPVL vs HERC examined the provisions of the PPA with PTC and PSA (with Haryana discoms) and had held that PTC was dealing on its own behalf independently as a principal in both, the PPA and PSA and was taking upon itself the financial and commercial risks.

(c) The APTEL in its judgment dated 4.9.2012 in Appeal Nos. 94 & 95 of 2012 (BRPL & BYPL vs DERC & anr) and judgment dated 14.7.2016 in Appeal No. 306/2013 (Maithon Power Ltd vs DERC & ors) had held that adjudication of disputes covered under clauses (a) & (b) of Section 79(1) read with Section 79(1)(f) would necessarily involve all terms related to tariff such as billing, payment, consequences of early payment by way of grant of rebate, payment of surcharge, termination & suspension of supply, payment security mechanism such as opening of LC, escrow arrangement etc. The Petition is, therefore, maintainable.



(d) In terms of Article 9.5.1 of the PPA dated 21.3.2006, the Respondent PTC is mandated to establish a payment security mechanism in favour of the Petitioner. Also, in terms of Regulation 7(h) of the Trading License Regulations, 2009, PTC is obligated to ensure timely payment of dues to the Petitioner either through LC or any other appropriate mechanism mutually agreed between parties.

(e) The PPA and the PSA are not back to back arrangements and are independent contracts. Hence, PTC is obligated to establish a payment security mechanism by opening of LC in favour of the Petitioner in terms of the PPA and the same is not dependent upon the discoms establishing LC in favour of PTC in terms of the PSA.

2. The learned Senior counsel for Respondent PTC mainly argued as under:

(a) As admitted by the Petitioner, the generating station has a composite scheme for generation and sale of power to more than one State. There is a clear nexus between the PPA and PSAs executed by the parties, as the Petitioner is aware that the discoms, who are parties in this Petition, are the ultimate buyers of the power supplied from the generating station. Moreover, the provisions of the PPA and the PSAs are identical. Thus, the jurisdiction of the Commission is triggered in terms of the back to back arrangements made by the parties for supply of power.

(b) Though Article 9.5.1 of the PPA provides for PTC to establish payment security mechanism in favour of the Petitioner, it is implicit that the same is contingent upon the discoms opening LC in favour of PTC in terms of PSAs. A contract is a commercial document between the parties and the same is required to be interpreted in a manner to give efficacy to the contract. Moreover, under Article 9.5.8 (b) of the PPA, the Petitioner has a lien on the bank account maintained by PTC and in case, the Petitioner is unable to realize the dues from PTC, Article 9.5.8 (c) provides that PTC can invoke payment security mechanism under the PSAs and discharge its obligations.

(c) In terms of the judgments of APTEL in PTC India Ltd vs UERC & ors [(2011) ELR (APTEL) 81] and Lanco Power Ltd. vs HERC & ors [(2011) ELR (APTEL) 1714], the Respondent PTC is only a facilitator for supply of electricity by a generator to the distribution licensees. PTC does not act as merchant trader and the financial and commercial risks are, therefore, passed on to the Purchaser.

(d) PTC has received LC from the Respondent discoms of the States of Rajasthan and Punjab and the discoms of Haryana and UP are yet to establish LC in favour of PTC.

(e) The MoP, Gol on 28.6.2019 has ordered that NLDC and RLDC shall dispatch power only after it is intimated by the generating company and/ distribution companies that LC for the desired quantum of power has been opened and copies made available to the concerned generating company.

(f) The Respondent PTC may be granted time to file written submissions.

3. The learned counsel for the Respondent, PSPCL submitted that it has established LC as payment security mechanism in favour of PTC for the quantum of power contracted under the PSA. The learned counsel requested for permission to file its written submissions.

4. The learned counsel for the Petitioner reiterated that there was no back to back arrangement and that the provisions of the PPA and PSA were entirely different. He submitted that Article 9.5.1 explicitly provides for PTC to establish payment security mechanism and PTC cannot make it contingent upon the discoms establishing LC in its favour. The learned counsel further submitted that the provisions of the contract



cannot be read into so as to invalidate the contract. He also stated that revenue account has not been established by PTC in terms of Article 9.5.8(b) of the PPA and hence the question of Petitioner's lien on the same does not arise.

5. At the request of the learned counsels, the parties are granted time till **9.7.2019** to file their written submissions in the matter. No extension of time shall be entertained for any reason whatsoever. Subject to this, order in the Petition was reserved.

By order of the Commission

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

