

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 319/MP/2019

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of disputes between the Petitioner and the Respondent and for direction for payment.

Petitioner : Damodar Valley Corporation (DVC)

Respondent : BSES Yamuna Power Limited (BYPL)

Date of Hearing : 8.5.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Ms. Ranjitha Ramachandran, Advocate, DVC
Ms. Anushree Bardhan, Advocate, DVC
Shri Buddy Ranganadhan, Advocate, BYPL
Shri Rahul Kinra, Advocate, BYPL

Record of Proceedings

The matter was listed for hearing through video-conferencing.

2. Learned counsel for the Petitioner submitted that the dispute involved in the present Petition pertains to outstanding dues to be paid by the Respondent, BSES Yamuna Power Limited (BYPL) to the Petitioner on account of a) late payment surcharge, b) principal amount, and c) the manner and method of adjustment of the payments made by BYPL from time to time, namely, the priority of adjustment and matters related thereto.

3. Learned counsel for the Petitioner submitted that the Petitioner had entered into Power Purchase Agreement (PPA) dated 24.8.2006 with Delhi Transco Limited (DTL) for supply of electricity to DTL. Pursuant to orders of Delhi Electricity Regulatory Commission, the PPA was assigned to three Distribution Companies of Delhi including the Respondent, BYPL. In terms of the provisions of the said PPA, for the supply of electricity, BYPL is required to make payment to the Petitioner as per the tariff determined by this Commission for its various generating stations and in case there is delay in payment of bills by due date, BYPL is liable to pay Late Payment Surcharge as per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations as notified by the Commission from time to time. The provisions of the PPA do not provide for the priority of adjustment of the principal amount due before adjustment of interest including the arrears of interest for the past period or otherwise contain any specific provision for priority of adjustment to be made in regard to the payments made by BYPL. Accordingly, the



payments made by BYPL have to be first adjusted towards the late payment surcharge and then the principal amount in terms of the general principle as laid down by the Hon'ble Supreme Court in its various decisions including the decision of the constitution bench in the case of Gurpreet Singh v. Union of India and Ors. [(2006) 8 SCC 457]. However, on the contrary, BYPL is wrongly claiming that the payment has to be first adjusted towards the current dues, then the principal amount due and lastly the late payment surcharge. Accordingly, the present Petition has been filed, *inter-alia*, praying that the Petitioner is entitled to adjust the amount paid by BYPL from time to time towards outstanding late payment surcharge and thereafter only towards the outstanding principal amount. Learned counsel for the Petitioner requested to issue notice to the Respondent.

4. Learned counsel for the Respondent, BYPL accepted the notice and sought four weeks' time to file reply to the Petition.

5. After hearing the learned counsels for the Petitioner and the Respondent, the Commission admitted the Petition.

6. The Commission directed the Petitioner to serve copy of the Petition on the Respondent immediately, if not already served. The Respondent was directed to file its reply by 5.6.2020 with an advance copy to the Petitioner who may file its rejoinder, if any, by 30.6.2020. The Commission directed that due date of filing of reply and/or rejoinder should be strictly complied with.

7. The Petition shall be listed for hearing in due course for which separate notice will be issued

By order of the Commission

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

