

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 367/MP/2019**

- Subject : Petition for execution of order dated 30.4.2019 read with corrigendum dated 29.5.2019 in Petition No. 255/MP/2017 and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the order dated 30.4.2019 read with corrigendum dated 29.5.2019 passed by the Commission in Petition No. 255/MP/2017.
- Petitioner : Adhunik Power and Natural Resources Limited (APNRL)
- Respondents : West Bengal State Electricity Distribution Company Limited (WBSEDCL) and Anr.
- Date of Hearing : 30.6.2020
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member
- Parties present : Shri M. G. Ramachandran, Sr. Advocate, APNRL  
Shri Deepak Khurana, Advocate, APNRL  
Shri Tejasv Anand, Advocate, APNRL  
Shri Vishrov Mukerjee, WBSEDCL  
Ms. Raveena Dhamija, Advocate, WBSEDCL  
Ms. Ameya Vikram Mishra, Advocate, WBSEDCL

**Record of Proceedings**

The matter was heard through video conferencing.

2. Learned senior counsel for the Petitioner submitted that the instant Petition has been filed, *inter-alia*, for execution of the Commission's order dated 30.4.2019 read with corrigendum dated 29.5.2019 in Petition No. 255/MP/2017 and seeking action against the Respondents for non-compliance of the Commission's directions contained in the said order. Learned senior counsel further submitted as under:

(a) The Commission vide Record of Proceedings (RoP) for the hearing dated 21.5.2020 had directed WBSEDCL to indicate the amount it is willing to pay to the Petitioner pending the assessment/verification of the claims. In response, WBSEDCL has stated that at present, it is in a position to release Rs. 10 crore,



which is less than 8% of the total outstanding dues of Rs. 138.56 crore as on April, 2020.

(b) WBSEDCL has cited severe financial stress on account of nation-wide lockdown due to Covid-19 and the recent cyclone. However, the lockdown was imposed on 24.3.2020 and liability of WBSEDCL to pay the dues had arisen much before the lockdown as well as the cyclone. Even as on March, 2019, approximately Rs.119 crore was outstanding against the Petitioner.

(c) WBSEDCL has made vague allegations of lack of proof of payments and discrepancies in invoices. The Petitioner has already submitted all documents required by WBSEDCL in July, 2019 itself. The Petitioner's claims are in terms of the Commission's order only.

(d) Even if the contentions of WBSEDCL regarding the operational parameters for computation of Change in Law impact are accepted, though the same are not tenable, the disputed amount would work out to the tune of approximately Rs. 2.50 crore. There is no reason or justification at all for WBSEDCL to withhold the entire claims of the Petitioner.

(e) Liability towards payment of Change in Law bills/claims is recurring liability and WBSEDCL is also not paying current Change in Law bills.

3. Learned counsel for the Respondent, WBSEDCL, submitted as under:

(a) WBSEDCL has proposed to expedite the verification process by taking up year-wise verification and releasing the amount on receipt of the year-wise preliminary report from Deloitte, which has been appointed by WBSEDCL to assess and verify the claims raised by the Petitioner. This will be done pending final report from Deloitte and WBSEDCL will ensure that amounts are released periodically instead of waiting for the final report.

(b) The PPAs have been entered into between the parties on negotiated route and are not similar to the PPAs entered into under Section 63 or Section 62 of the Electricity Act, 2003, wherein the base tariff/price is indicated in the PPAs.

(c) The computation submitted by the Petitioner for Change in Law claims, *prima-facie*, contained various discrepancies. The various operational parameters including the energy/fuel charges considered by the Petitioner for computing the Change in Law claims are, as have been approved/determined by Jharkhand Electricity Regulatory Commission, in respect of its PPA executed with Jharkhand Bijli Vitran Nigam Limited instead of on actual basis.

(d) WBSEDCL is also facing severe financial stress on account of lockdown which has been extended till 31<sup>st</sup> July, 2020 in the State and due to the recent cyclone.



(e) Accordingly, WBSEDCL has indicated its willingness to pay Rs. 10 crore of the outstanding disputed amounts to the Petitioner pending the assessment/verification of the claims.

4. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondent, WBSEDCL, the Commission observed that vide RoP for the hearing dated 21.5.2020, the Commission had expressed that the entire claims of the Petitioner ought not to be held up pending assessment/verification by WBSEDCL and had accordingly directed WBSEDCL to indicate the amount it was willing to pay to the Petitioner. WBSEDCL indicated its willingness to pay Rs. 10 crore to the Petitioner against the outstanding dues of Rs. 138.56 crore (upto April, 2020). The Commission found the offer of WBSEDCL to pay Rs. 10 crore totally inadequate considering that the liability to pay the dues had arisen much before the current Covid-19 pandemic. The Commission directed WBSEDCL to pay Rs. 40 crore to the Petitioner towards Change in Law claims raised pursuant to the Commission's order dated 30.4.2019 read with corrigendum dated 29.5.2019, on or before 10.7.2020. Taking into account WBSEDCL's apprehensions over the computation of claims, the Commission clarified that pursuant to the reconciliation/verification, if the claims of the Petitioner work out to less than Rs. 40 crore, the Petitioner will return the excess amount paid by WBSEDCL along with interest at the rate of 1.50% per month. Learned senior counsel for the Petitioner agreed to the said proposition.

5. 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)**

