

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 385/MP/2019
With I.A. No. 1/2020**

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

Date of Order: 18th March, 2020

In the matter of

Petition under Sections 129, 142, 79 and other applicable provisions of the Electricity Act, 2003 and the provisions of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 for violation of the terms and conditions of the licence and the agreement entered into between the parties for non-payment of dues to the seller in trading transactions.

And

In the matter of

Refex Energy Private Limited (REL)
No. 67, Bazullah Road,
T. Nagar, Chennai-600 017

...**Petitioner**

Vs

1. GMR Energy Trading Limited (GMRETL)
302, New Shakti Bhawan,
T-3, Opp-ATS Complex, International Terminal,
Indira Gandhi International Airport,
New Delhi-110 037

2. Uttarakhand Power Corporation Limited (UPPCL)
Victoria Cross Vijeyta Gabar Singh Urja Bhawan,
Kanwali Road, Balliwala Chowk,
Dehradun-248 001, Uttarakhand

3. VS Lignite Power Private Limited
8-2-293/82/A/431/A,
Road No. 22, Jubilee HILLS,
Hyderabad.

.....**Respondents**

Parties Present:

Shri Anand K. Ganesan, Advocate, REL
Ms. Swapna Seshadri, Advocate, REL
Shri Ashwani Ramanathan, Advocate, REL

Ms. Nishtha Kumar, Advocate, GMRETL
Shri Suhael Buttan, Advocate, GMRETL

ORDER

The Petitioner, Refex Energy Private Limited, has filed the present Petition along with the following prayers:

- “(a) Declare that the Respondent No. 1 is acting in contravention of the terms of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009, the conditions of licence and the Agreement entered into by the Respondent No. 1 is not paying the power purchase dues to the Petitioner;
- (b) Initiate Proceedings against Respondent No. 1 for violating the Regulations and directions of the Commission;
- (c) Hold and declare that the liquidated damages payable under Article 11 of the PPA, are to the extend as claimed by UPCL;
- (d) Hold and direct the Respondent to release all payments made by UPCL for supply of power under the PPA dated 26.9.2018;
- (e) Hold and direct the Respondent No. 1 is liable to pay interest at the rate of 1.25% per month as provided for in Article 9 of the PPA, from the date the amounts became due till the date of actual payment to the Petitioner; and
- (f) Award costs of the present proceedings.”

2. The Petitioner has submitted that the Respondent, GMR Energy Trading Limited, (GMRETL) as a trading licensee, is only selling the power purchased and cannot hold up the entire chain of the transactions by refusing to pay the amount to the seller. According to the Petitioner, as on 30.9.2019, Rs. 41.60 crore is outstanding against GMRETL.

3. The Respondent, GMRETL has filed Interlocutory Application No. 1/2020 seeking rejection of the present Petition due to lack of jurisdiction in terms of principles enshrined under Order VII Rule 11 of the Code of Civil Procedure, 1908.

4. The matter was heard on 12.3.2020. During the course of hearing, learned counsel for the Petitioner submitted that the Petitioner and the Respondent, GMRETL have mutually agreed on amicable settlement of the disputes involved in the present Petition. Learned counsels for the Petitioner and the Respondent, GMRETL submitted that in view of the settlement arrived at between the parties, the Commission may dispose of the Petition.

5. The Petitioner vide its affidavit dated 16.3.2020 has stated that subsequent to filing of the present Petition, a meeting was convened on 6.3.2020 between the Petitioner and the Respondent, GMRETL to amicably resolve the disputes involved in the present Petition and in the said meeting the parties have arrived at an amicable settlement. The relevant portion of the minutes of meeting dated 6.3.2020 is extracted as under:

“After detailed deliberations amongst the authorised representatives of both sides as named above it has been agreed as under:

- 1) REL and GMRETL are ready and willing for an out-of-court settlement on the subject matter of Petition No. 385/MP/2019 pending in CERC.
- 2) GMRETL agrees to remit to REL`s bank account, the amounts equivalent to power supply (from VS Lignite Power Plant) related payments as stated hereunder.
- 3) Both the parties shall file the application for withdrawal of Petition (385/MP/2019) to CERC before 12.03.2020 (next date of hearing).
- 4) REL shall write a letter to UPCL for releasing payment for the billed amount for pending May, 2019 second fortnight energy bill of Rs. 15.46 crore to GMRETL.
- 5) GMRETL shall, accordingly, request UPCL to release pending payments for power supplied during contract period.
- 6) The Agreement between GMRETL and UPCL shall be acted upon independent of this settlement.
- 7) The timeline for release of payment by GMRETL to REL is as follows:
 - i. Rs. 7.50 crore shall be released by 11.03.2020.

ii. Rs. 5.00 crore will be released within 3 working days of submissions of Joint Withdrawal Application to CERC.

iii. Rs. 2.50 crore will be released within 30 days from filing of the Application.

iv. Rs. 6.41 crore shall be released on or before 10.5.2020.

v. Rs. 15.46 crore (pending May 2019 second fortnight bill amount) shall be released within 3 days from the receipt from UPCL.

8) The total amount payable towards full & final settlement by GMRETL to REL shall be Rs. 36.87 crore as stated above without any liability towards LPSC or interest or penalty or compensation etc.

9) This is full & final settlement between the parties and REL shall have no claim whatsoever, on any count. There shall be no other liability on GMRETL under power Purchase Agreement between REL & GMRETL dated 27.9.2018.

10) Any additional amount that UPCL releases at any time till August 2020 towards reversal of penalty deducted by UPCL towards short supply of power in October 2018 shall be released to REL.

11) This MOM regarding the understanding shall form part of the Joint Withdrawal Application to be filed by REL with CERC."

6. The Petitioner has submitted that in view of the above settlement arrived between the parties, the present Petition may be disposed of.

7. Considering the minutes of meeting and submissions of the parties, the present Petition is disposed of as withdrawn without going into the merits of the case.

8. Accordingly, the Petition No. 385/MP/2019 along with IA No. 1/2020 is disposed of.

**Sd/-
(I.S. Jha)
Member**

**sd/-
(P.K. Pujari)
Chairperson**