

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 119/MP/2021

Subject : Petition under Section 79 (1) (f) of the Electricity Act, 2003 read with Article 12 of the Power Purchase Agreement dated 23.3.2011 seeking Appointment of Arbitrator for resolution of disputes between Tata Power Delhi Distribution Limited and THDC Limited to arbitration.

Petitioner : Tata Power Delhi Distribution Limited

Respondent : THDC India Limited

Date of Hearing : **19.7.2021**

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

Parties present : Shri Venkatesh, Advocate, TPDDL
Shri Ashutosh Kumar Srivastava, Advocate, TPDDL
Shri Anurag Bansal, TPDDL
Shri M.G. Ramachandran, Senior Advocate, THDC
Ms. Anushree Bardhan, Advocate, THDC
Shri Rajesh Sharma, Advocate, THDC
Shri Mukesh Kumar Verma, Advocate, THDC
Shri Ajay Vaish, Advocate, THDC
Shri Rakesh Singh, Advocate, THDC

Record of Proceedings

Case was called out for virtual hearing.

2. During the hearing on 'admission', the learned counsel for the Petitioner made detailed oral submissions in support of the prayer for appointment of Arbitrator for resolution of disputes between the parties through arbitration, in terms of Article 12 of the Power Purchase Agreement (PPA) dated 23.3.2011. The learned counsel submitted that the supply of power to the Petitioner from the 1000 MW Tehri Pumped Storage Plant (in short 'the project') of the Respondent, with scheduled COD of 31.12.2014, has not been commissioned till date. The learned counsel further submitted that the inordinate and unexplained delay in the commissioning of the project has caused adverse financial implications to the Petitioner and, therefore, the Petitioner vide letter dated 12.1.2021 had terminated the PPA, which has not been accepted by the Respondent vide its letter dated 29.1.2021. He accordingly submitted that the termination of the PPA by the Petitioner and the subsequent non-acceptance of such termination by the Respondent has resulted in a dispute between the parties, which may be referred to Arbitration in terms of Article 12 of the PPA. The learned counsel added that in terms of Section 79(1)(f) of the Electricity Act, 2003, the Commission has the jurisdiction to refer the disputes to arbitration (*judgment of Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Limited v Essar Power Ltd,*



(2008) 4 SCC 755) was referred to);

3. On a specific query by the Commission as to the provision of the PPA under which the Petitioner had terminated the PPA, the learned counsel for the Petitioner referred to Section 55 of the Indian Contract Act, 1872 and submitted that time was the essence of the contract.

4. The learned Senior counsel for the Respondent, THDC India Limited raised preliminary objections and sought liberty to file its reply on 'maintainability' of the petition.

6. The Commission, after hearing the parties, directed the Respondent THDC to file its reply on 'maintainability', by 13.8.2021 and serve copy to the Petitioner, who may file its rejoinder, if any, by 27.8.2021. The parties shall ensure the completion of pleadings within the due dates mentioned and no extension of time shall be granted.

7. The petition shall be listed in due course for hearing 'on maintainability' for which separate notice will be issued.

By order of the Commission

Sd/-
(B.SreeKumar)
Joint Chief (Law)

