

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 391/MP/2018**

**&**

**Petition No. 100/MP/2019**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order: 27<sup>th</sup> October, 2021**

**In the matter of**

**Petition No. 391/MP/2018**

Petition for procurement of power vide PPA dated 13.4.2016 between Northern Railways for Uttar Pradesh and Jindal India Thermal Power Limited read with the Supplementary Agreement dated 8.11.2017.

**And**

**In the matter of**

Indian Railways,  
(through Northern Railways)  
Headquarters office, Baroda House,  
New Delhi- 110001.

**.....Petitioner**

**Vs**

Jindal India Thermal Power Limited,  
Plot No.2, Pocket C, 2<sup>nd</sup> Floor,  
Nelson Mandela Road, Vasant Kunj,  
New Delhi- 110070.

**.....Respondent**

**And**

**In the matter of**

**Petition No. 100/MP/2019**

Petition under Section 79 (1)(b) and 79(a)(f) of the Electricity Act, 2003 seeking adjudication of disputes arising out of the Agreement for Procurement of Power (APP) dated 13.4.2016 and Supplementary Agreement dated 8.11.2017 executed between the Petitioner and the Respondent No.1.



**And**

**In the matter of**

Jindal India Thermal Power Limited,  
Plot No.2, Pocket C, 2<sup>nd</sup> Floor,  
Nelson Mandela Road, Vasant Kunj,  
New Delhi- 110070.

**.....Petitioner**

Vs

1. Northern Railways, Uttar Pradesh  
Headquarters office, Baroda House,  
New Delhi- 110001

2. Railway Energy Management Company Limited,  
Core-1, 12<sup>th</sup> Floor, SCOPE Minar, Laxmi Nagar,  
Delhi- 110092

**.....Respondents**

**Parties Present:**

Shri Pulkit Aggarwal, Advocate, Northern Railways  
Shri Sanjay Singh, Northern Railways  
Shri Anurag Gaur, Northern Railways  
Shri Venkatesh, Advocate, JITPL  
Shri Suhael Buttan, Advocate, JITPL  
Shri Neil Chatterjee, Advocate, JITPL  
Shri Anant Singh, Advocate, JITPL  
Shri Pulak Srivastava, JITPL

## **ORDER**

Petition No.391/MP/2018 has been filed by the Petitioner, Indian Railways  
(through Northern Railways-UP) seeking the following relief(s):

- “(a) Declare that Termination of the Agreement for Procurement of the Power dated 13.4.2016 and Supplementary Agreement dated 8.11.2017 executed between the Petitioner and Respondent, by the Respondent vide Respondents letter dated 27.9.2018 and all actions taken by the Respondent in consequence or in pursuance thereof as null and void being illegal and unlawful;*
- (b) Direct the Respondent to restore supply of electricity to the Petitioner in terms of the PPA dated 13.4.2016 executed between the Petitioner and the Respondent;*
- (c) Hold that the Respondent is in breach/default of the PPA dated 13.4.2016 as it has failed to declare itself available to the extent contracted for in terms of the PPA dated 13.4.2016 and has failed to offer electricity from the alternate source in terms of Article 10.3, when the Respondent has not been able to supply the full contacted capacity from its own plant in Orissa and consequently committed a breach of the PPA dated 13.4.2016;*



- (d) *Hold that the Respondent is in breach/default of the PPA dated 13.4.2016 as it has failed to provide performance bank guarantee for an additional amount of Rs.1.7 crores in terms of Article 9.1 with respect to the additional quantum of 17MW agreed to between the parties by way of Supplementary Agreement dated 8.11.2017;*
- (e) *Hold that the Respondent is in breach/default of the PPA dated 13.4.2016 as it has diverted and sold the power contracted with the Petitioner to the third parties, including at Power Exchange;*
- (f) *Direct the Respondent to pay damages in terms of the Article 14.1.3 for the sale of power contracted with the Petitioner to the third parties, including at Power Exchange for the period from April, 2018 till restoration of the full supply by the Respondent as per the terms of the PPA;*
- (g) *Direct the Respondent to compensate the Petitioner for SDM charges payable by the Petitioner for the over drawal of the power by the petitioner from Uttar Pradesh Grid for the period subsequent to 27.9.2018 till such time alternate arrangement for procurement of power from Bhartiya Rail Bijlee Company Limited was made by the Petitioner;*
- (h) *Direct the Respondent to compensate the Petitioner for difference in the amount paid for electricity procured by the Petitioner from Bhartiya Rail Bijlee Company Limited and the amount that would have been payable to the Respondent in terms of the PPA if the Respondent had supplied the quantum of power;*
- (i) *Direct the Respondent to compensate the Petitioner for the penalty that may be imposed on the Petitioner in view of the proceedings initiated by the UPSLDC before the Uttar Pradesh Electricity Regulatory Commission;*
- (j) *Hold that obligation towards RLDC and SLDC charges for the electricity supplied by the Respondent prior to the commencement of the MTOA, i.e. 8.7.2018 is of the Respondent;*
- (k) *Award pendent lite interest on the claim of the Petitioner at 15% per annum during the pendency of the proceedings before the Hon'ble Commission;*
- (l) *Award exemplary cost of the proceedings against the Respondent; and*
- (m) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

2. During the pendency of the above petition, Petition No. 100/MP/2019 was filed by the Petitioner, Jindal India Thermal Power Limited ('JITPL') seeking the following relief(s):

- "(a) Direct NR-UP to pay Termination Payment of Rs. 26,98,92,000/- under Article 9.3.2 of the APP for material breach by NR-UP;*
- (b) Direct NR -UP to reimburse Loss of recovery of Fixed Charge of Rs. 1,64,93,40,000/- due to delay in commencement of Supply for reasons solely attributable to NR-UP;*
- (c) Direct NR-UP to pay pending Fixed Charges of Rs. 88,70,758 /- and extra damages deducted of Rs. 18,16,868.94/- during operation of APP;*
- (d) Direct NR-UP to reimburse Rebate of Rs. 23,75,306/- and declare that the same was wrongly withheld by NR-UP;*



- (e) *Direct NR-UP to pay the cost incurred due to variation in Transmission Charges and Losses including POC 3 Bills of Rs. 1,40,09,850 /- payable as per Article 5.5 of the APP;*
- (f) *Direct NR-UP to pay Operating Charges and Application Fee of Rs. 10,24,000/- applicable for supply made by the Petitioner under STOA;*
- (g) *Direct NR-UP to pay compensation of Rs. 2,25,52,312 /- on account of consequences of occurrence of Change in Law events, to restore JITPL to the same economic position where it was, before the occurrence of Change in Law events, as enumerated in Article 21 of the APP;*
- (h) *Direct NR-UP to pay carrying Cost on the amounts due against Energy Bills raised by JITPL;*
- (i) *Direct NR-UP to reimburse of Relinquishment Charges for Medium Term Open Access ("MTOA") of Rs. 7,23,53,879/- paid to the Central Transmission Utility ("CTU");*
- (j) *Direct NR-UP to release Contract Performance Security Bank Guarantee submitted by JITPL to NR-UP in accordance with the agreement;*
- (k) *Pass any such Order/ Direction as this Hon'ble Commission may deem fit.*

3. Petition No.100/MP/2019 was admitted on 7.5.2019 and the parties were directed to complete pleadings in the matter. The Commission also directed the Respondents not to take any coercive measure of invoking the Bank Guarantee (BG) and the Petitioner to keep the BG alive till the disposal of the petition. Petition No. 391/MP/2018 was admitted on 9.5.2019 and the parties were directed to complete pleadings in the matter. Based on the submissions of the Petitioner, the Commission directed the listing of this petition along with Petition No.100/MP/2019 for hearing. The parties have completed the pleadings in these matters. Though these petitions were listed for hearing on 20.8.2019 and 17.9.2019, the same could not be heard due to paucity of time/ adjournment at the request of the parties.

4. While so, the Petitioner, Northern Railways-UP vide additional affidavit dated 10.1.2020 and the Petitioner, JITPL vide additional affidavit dated 17.1.2020, submitted that they have amicably resolved the issues between them and have executed a Settlement Agreement on 9.1.2020, with Respondent No.2, Railway Energy Management Company Limited, being the conforming party. The parties in their



respective additional affidavits have enclosed the copy of settlement agreement dated 9.1.2020, with a prayer to list the petitions for appropriate directions.

5. Subsequently, during the hearing of these petitions on 23.7.2021, through video conferencing, the learned counsels appearing for the Petitioners, jointly submitted that since addendum to the settlement agreement dated 9.1.2020 is to be executed by the parties, the hearing of the matters may be postponed. The Commission, after directing the parties to file on affidavit the status report on the settlement arrived at by the parties, reserved its order in these petitions. Subsequently, at the request of the parties, additional time was granted to file the status report along with the addendum to the Settlement Agreement dated 9.1.2020.

6. The Petitioners in these petitions, namely, JITPL and Northern Railways-UP, have executed an addendum on 19.8.2021 (to the settlement agreement dated 9.1.2020) and have filed the same vide additional affidavits dated 7.9.2021 and 9.10.2021 respectively. Both the parties in their affidavits, have prayed to take the addendum dated 19.8.2021 on record and also to dispose of these petitions accordingly.

7. In view of the submissions of the parties, the Settlement Agreement dated 9.1.2020 and the Addendum dated 19.8.2021, are taken on record. Recital (I) and Recital (J) of the settlement agreement dated 9.1.2020, provide as under:

*“(I) The Supplier vide its letter No. JITPL/NR-UP/FY20/191219 dated 19.12.2019 in response to the utility’s letter dated 09.11.2018 has proposed to resolve the issues between the parties and restore the supply of power to the utility in terms of the APP dated 13.4.2016 read with the Supplementary Agreement dated 08.11.2017.*

*“(J) Both parties in order to buy peace wish to resolve all their disputes and differences amicably by putting an end to all pending litigations and avoid any further disputes/litigations.”*



8. In Clause 3 and Clause 4 of the Settlement Agreement dated 9.1.2020, the parties have agreed to the following:

*“3. The Supplier hereby agrees that in terms of the present settlement, the Supplier shall have no claim whatsoever against the Utility and Supplier shall unconditionally withdraw its petition being Petition No.100/MP/2019 filed before the Central Electricity Regulatory Commission.*

*4. The Utility hereby agrees that in terms of the present settlement, the Utility shall have no claim whatsoever against the Supplier and the Utility shall unconditionally withdraw its petition being Petition No. 391/MP/2018 filed before Central Electricity Regulatory Commission”*

9. Some of the clauses in the Addendum dated 19.8.2021 (to the settlement agreement dated 9.1.2020) executed by the parties’ are as under:

*“1. The parties vide Settlement Agreement dated 09.1.2020 had mutually agreed to resume supply of power in terms of the APP dated 13.4.2016 read with supplementary agreement dated 08.11.2017 for the remaining period of three years from date of resumption of power supply i.e for a period of three years less the period from 08..7.2018 to 26.9.2018 on the same terms and conditions as provided in the APP.*

xxx

*4. This is the addendum to the settlement agreement dated 9.1.2020 and both the parties have arrived at this Agreement of their free will and without any pressure or coercion.*

*5. Both the parties shall have no claims whatsoever against each other as agreed in point No.3 & 4 of settlement agreement dated 9.1.2020. The utility hereby agrees that it shall clear all the pending payments, if any, in terms of the APP dated 13.4.2016 and supplementary agreement dated 8.11.2017 against the power supplied by the supplier on STOA basis or MTOA basis.*

*6. The parties agree that they shall have no claim whatsoever against each other for the period commencing from 31.3.2020 till such time the power supply commences in terms of the present addendum to Settlement Agreement dated 9.1.2020.”*

10. While the Petitioner, Northern Railway-UP vide additional affidavit dated 10.1.2020 has submitted that the parties after discussions have been able to amicably resolve the issues between them and have recorded the terms of settlement into writing, the Petitioner, JITPL vide additional affidavit dated 17.1.2020 has submitted that as per Clause 3 and Clause 4 of the settlement agreement dated 9.1.2020, JITPL and Northern Railway–UP have agreed to withdraw their respective petitions.



11. In consideration of the submissions of the parties that all disputes between them have been amicably resolved in terms of the Settlement Agreement dated 9.1.2020 read with Addendum dated 19.8.2021 executed by the parties, the Petitioners are permitted to withdraw their respective petitions.

12. Consequent upon this, the interim direction dated 7.5.2019 issued in Petition No.100/MP/2019 stands discharged.

14. Petition No. 391/MP/2018 and Petition No.100/MP/2019 are disposed of in terms of the above.

**Sd/-  
(Pravas Kumar Singh)  
Member**

**Sd/-  
(Arun Goyal)  
Member**

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

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

