

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 108/MP/2022 along with IA No.16/IA/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 11 and 22 of the Agreement for Procurement of Power dated 25.10.2021 seeking directions to PTC India Limited/Kerala State Electricity Board Limited to make payment of entire Capacity Charges to Jindal India Thermal Power Limited in terms of the APP dated 25.10.2021.

Date of Hearing : 21.4.2022

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

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : PTC India Limited and Anr.

Parties Present : Shri Amit Kapur, Advocate, JITPL
Shri Akshat Jain, Advocate, JITPL
Shri Pratyush Singh, Advocate, JITPL
Shri Pulak Srivastava, JITPL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed challenging the arbitrary and unreasonable actions of the Respondents regarding (i) unilateral deduction of amounts from the monthly bills raised by the Petitioner, (ii) unilateral reduction of the Petitioner's availability for the month of January, 2022 to 140.69 MUs instead of 160.51 MUs actually declared by the Petitioner, and (iii) arbitrarily restricting/capping the Petitioner's daily availability/declared capacity upto maximum of 85% on a daily basis for the purpose of payment of capacity charges in the complete violation of Agreement of Power Purchase ('APP') and the Electricity Act, 2003 (Act). Learned counsel mainly submitted the following:

(a) The Petitioner has entered into an APP dated 25.10.2021 with the Respondent No.1, PTC India Limited for generation and supply of 270 MW power to PTC from its 1200 MW Thermal Power Project, Odisha for the period of 3 years (6 months only from January to June each year) for onward supply to the Respondent No.2, Kerala State Electricity Board under the Power Supply Agreement dated 27.10.2021 on back-to-back basis.

(b) In the present case, the Respondents have unilaterally deducted an amount of Rs. 3.76 crore and Rs. 3.20 crore from its monthly invoices dated 3.2.2022 and 1.3.2022 for power supplied in the months of January, 2022 and February, 2022 respectively.

(c) The Respondents vide letter dated 11.2.2022 have communicated that as per Article 13.2.2 of the APP, the Petitioner is entitled to receive payment of capacity charges for its availability/declared capacity after limiting the same upto 85% only on a daily basis and accordingly, they restricted/capped the Petitioner's availability/declared capacity upto maximum of 85% or actual, whichever is lower and consequently, deducted the amounts from the monthly capacity charges as noted above.

(d) In terms of APP dated 25.10.2011, the payment of capacity charges to the Petitioner is to be made by the procurer every month based on the cumulative availability of the Power Plant as declared by the Petitioner in such month (i.e. the sum of daily availability declared by the Petitioner for the month) to the extent of normative availability i.e. 85% and cannot be restricted/capped by limiting the daily availability upto maximum of 85% irrespective of actual availability declared by the Petitioner. Reliance was placed on the Articles 5.1.4, 11.1.1, 11.1.2, 11.2, 11.3.1, 11.3.2 and 11.5.3 of the APP.

(e) There is no provision in the APP or the Act which allows the Respondents to unilaterally restrict/reduce the Petitioner's monthly availability by restricting/capping its daily availability/declared capacity upto maximum of 85% and then make payment of capacity charges rather than based on actual availability declared by the Petitioner.

(f) The Commission by its order dated 31.12.2021 passed in Petition No. 317/MP/2019 (Bharat Aluminium Co. Ltd. v. KSEBL and Anr.), while interpreting similar clause of PPA therein, has categorically held that the capacity charges payable for 'availability' in each month is with reference to the normative availability achieved during each accounting year and not based on normative availability of each day as being contended by KSEBL in the present case. The BALCO's PPA is *pari-materia* to the Petitioner's APP.

(g) Evidently, the Respondents will continue to unilaterally deduct the amount from the capacity charges to be billed/claimed by the Petitioner in future invoices by arbitrarily restricting/capping its daily availability/declared capacity upto maximum of 85% or actual, whichever is lower (approximately Rs. 3 crore from each monthly bills). Accordingly, the Petitioner has also filed IA bearing No. 16/IA/2022, *inter alia*, seeking urgent interim direction to the Respondents to make full payment of capacity charges under monthly invoices dated 3.2.2022 and 1.3.2022 and the future monthly invoices based on the monthly cumulative availability declared by the Petitioner.

3. After hearing the learned counsel for the Petitioner, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition and IA on the Respondents immediately, if not already served and the Respondents to file their reply by 13.5.2022 after serving copy of the same to the Petitioner, who may file its rejoinder, if any, by 31.5.2022.

(c) The Petitioner to file the following information/clarification on affidavit by 13.5.2022:

(i) Details regarding appointment of Arbitral Tribunal as per Clause 22.3.2 and details of arbitration as per Clause 22.3.1 of PAPP and actions / inactions thereof; and

(ii) As per the PAPP, the annual fixed charges are required to be computed considering the monthly availability, furnish the detailed circumstances wherein the Clause 11.3.2 of PAPP is applicable i.e. on any day the supplier shall not be entitled to receive payment of fixed charge for availability exceeding 85% but only variable charges.

(d) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted.

(e) The prayers of the Petitioner for grant of interim direction will be taken-up on the next date of hearing after taking into the account the response of the Respondents thereon, if any.

4. 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)
Joint Chief (Law)**