

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 94/MP/2022**

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for seeking issuance of urgent directions upon the Respondents for making immediate payment of an amount of Rs. 39,50,89,662/- which has been illegally deducted by them from the monthly energy bills issued by the Petitioner for the period commencing from May' 21 to October' 21, and Rs. 26,50,88,621/- for the period November' 21 to December' 21 by unilaterally revising PAPP/ PPSA tariff on amount of a skewed and deliberate misinterpretation of the "Misdeclaration" provisions provided under the Article 11 of the Pilot Agreement for Procurement of Power/Pilot Power Supply Agreement alongwith interest/ carrying cost, and consequent judicial command for adhering to the provisions of the PAPP/ PPSA in their letter and spirit.

Petitioner : SKS Power Generation (Chhattisgarh) Limited (SPGCL)

Respondents : PTC India Limited and Anr.

**Petition No. 109/MP/2022 along with IA No.17/IA/2022**

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 seeking for quashing of the communications containing letters dated 16.12.2020 and 11.02.2022, issued by the Respondents thereby misinterpreting the provision of "Misdeclaration" provided under the Article 11 of the Pilot Agreement for Procurement of Power (PAPP)/ Pilot Power Supply Agreement (PPSA), and accordingly seeking directions upon the said Respondent to refund the amount of Rs. 46.16 Lakhs already deducted & to not deduct any amount (including Rs. 25.35 crores as indicated in PTC letter dated 11.02.2022) on this account from the monthly energy bills issued / to be issued by the Petitioner alongwith interest/ carrying cost, and consequent directions to adhere to the provisions of the PAPP/ PPSA in their letter and spirit.

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : PTC India Limited and Anr.

Date of Hearing : 21.4.2022

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

Parties Present : Shri Sajan Poovayya, Sr. Advocate, JITPL  
Shri Hemant Singh, Advocate, JITPL & SPGCL  
Shri Lakshyajit Singh Bagdwal, Advocate, JITPL & SPGCL  
Shri Harshit Singh, Advocate, JITPL & SPGCL  
Shri Pratibhanu Singh Kharola, Advocate, JITPL & SPGCL  
Ms. Raksha Agarwal, Advocate, JITPL & SPGCL  
Ms. Pragya Agarwal, Advocate, JITPL & SPGCL  
Shri Pulak Srivastava, JITPL

### **Record of Proceedings**

Cases were called out for virtual hearing.

2. Learned senior counsel for the Petitioners submitted that the present Petitions have been filed, *inter alia*, seeking directions upon the Respondents for making payment of an amount which has been illegally deducted by them from the monthly energy bills issued by the Petitioners by incorrect and complete misinterpretation of the 'Mis-declaration' provisions provided under Article 11 of the Pilot Agreement for Procurement of Power ('PAPP')/ Pilot Power Supply Agreement ('PPSA') along with consequent reliefs. Learned senior counsel and learned counsel for the Petitioners further submitted as under:

(a) Article 11.2.1 of the PAPP/PPSA provides that the declared availability would be normally deemed to be 100% of at all times unless it is "otherwise notified by the supplier". Thus, the Petitioners being supplier can declare availability less than 100% as per its availability.

(b) However, the Respondents by relying upon the incorrect interpretation of Article 11.2.4 of the PAPP/PPAS are taking a stand that there has been a mis-declaration on the part of the Petitioners, since it did not declare it to be available at the 100% of the contracted capacity.

(c) Mis-declaration is when the generator is unable to schedule/generate electricity against what is declared/ notified to the procurer. Whereas, in the present case, the availability which is declared is being supplied as generation for the said availability.

(d) Article 11.2.4 states that mis-declaration is only if availability is determined lower than either 100% or the reduced availability notified by the supplier. In the present case, the availability was never determined to be lower from what was notified. There is no mis-declaration as contended by the Respondents since whatever availability was declared by the Petitioners, they generated and supplied the exact same quantum of power.

(e) On the basis of the above complete mis-interpretation of Article 11.2.4 of the PAPP/PPAS, the Respondents have already made deductions for an amount of approximately Rs. 66 crore and Rs. 30 crore in case of the Petitioners, SPGCL and JITPL respectively from the monthly energy bills.

(f) The Petitioners are also seeking interim directions upon the Respondents not to make any deductions from the monthly bills of the Petitioners on the above basis during the pendency of the Petitions. The Petitioner, JITPL has also filed IA, bearing No.17/IA/2022, for seeking an ex-parte ad interim order to the above effect.

3. After hearing the learned senior counsel and learned counsel for the Petitioners, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioners 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 Petitioners, who may file their rejoinder, if any, 31.5.2022.

(c) The Petitioners to submit the following information/clarification on affidavit by 13.5.2022:

(i) Details regarding appointment of Arbitral Tribunal as per Clause 21.3.2 and details of arbitration as per Clause 21.3.1 of PAPP and actions / inactions thereof; and

(ii) Furnish the detailed information/circumstances under which clause 11.2.4 of PAPP on mis-declaration shall be applicable and the minimum and maximum values allowed for reduced availability as per the PAPP.

(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 Petitioners for grant of interim relief will be taken-up on the next date of hearing after taking into the account the response of the Respondents thereon.

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)**