

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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.
- Date of Hearing : 14.6.2022
- 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 Ltd. and Anr.
- Parties Present : Shri Buddy Ranganadhan, Advocate, JITPL
Shri Hemant Singh, Advocate, JITPL
Shri Lakshyajit Singh Bagdwal, Advocate, JITPL
Shri Harshit Singh, Advocate, JITPL
Shri Pulak Srivastava, JITPL
Shri Ravi Kishore, Advocate, PTC
Shri S. B. Upadhaya, Advocate, BSPHCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking quashing of the communications containing letters dated 16.12.2020 and 11.2.2022 issued by the Respondents misinterpreting the provisions of the “Mis-declaration” provided under Article 11 of the Pilot Agreement for Procurement of Power (‘PAPP)/ Pilot Power Supply Agreement (‘PPSA’). Learned counsel further mainly submitted as under:

- (a) The Respondents, by relying upon the incorrect interpretation of the Article 11.2.4 of the PAPP/PPSA, are taking a stand that there has been a mis-declaration on the part of the Petitioner since it did not declare the availability at 100 % of contracted capacity.



(b) However, as per Article 11.2.4, mis-declaration occurs only if the availability at any time is determined to be lower than either 100% contracted capacity or the reduced availability notified by the supplier. In the present case, the availability was never determined to be lower from what was notified by the Petitioner.

(c) There has been no mis-declaration as contended by the Respondents since whatever availability was declared by the Petitioner, the same power was generated and supplied by the Petitioner. Mis-declaration is when the generator is unable to schedule/generate electricity against what is declared/ notified to the Procurer. In this regard, reliance was placed on Regulation 6.4 (18) & (19) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010.

(d) The Respondent, PTC, in its reply, has also indicated that there is no event of mis-declaration of availability. Whereas, the Respondent, BSPHCL has not filed any reply in the matter despite clear direction of the Commission vide Record of Proceedings for the hearing dated 21.4.2022.

3. Learned counsel for the Respondent, PTC submitted that PTC has already filed its reply wherein it has submitted that there is no event of mis-declaration of availability, that the Article 11.2.4 does not applicable in the present case and that it had also informed the Respondent No.2 to this effect.

4. Learned senior counsel for the Respondent, BSPHCL sought two weeks' time to file reply. Learned senior counsel submitted that certain details/data relating to declaration/schedule could not be compiled and thus, the Respondent may be granted additional time to file reply to the Petition.

5. *In rebuttal*, learned counsel for the Petitioner submitted that the Commission may grant additional time to the Respondent. However, the Respondent may be restrained from making any deduction from the invoices raised by the Petitioner. Accordingly, learned counsel urged for grant of interim relief(s) as prayed for by the Petitioner in the matter.

6. In response to the specific query of the Commission regarding interplay between Article 10.3 and 11.2.4 of the PAPP, learned counsel for the Petitioner clarified that Article 10.3 (Substitute Supply) applies in the event the availability of the power station is reduced on account of scheduled maintenance, unscheduled maintenance or force majeure and it further provides only an option to the supplier to substitute the supply from any alternative source. Learned counsel further submitted that if the intent of the PAPP/PPSA was to have the availability at 100% of the contracted capacity at all the times, there would have been no reason to define the normative availability at 85%.

7. After hearing the learned senior counsel and learned counsel for the parties, the Commission permit the Respondent No.2 to file its reply within two weeks with copy to the Petitioner, who may file its rejoinder, if any, within a week thereafter.

8. Learned counsel for the Petitioner was permitted to upload its note of arguments within two days.

9. The Commission directed the Respondents not to make any further deduction from the invoices raised by the Petitioner on the ground which is subject matter of the present Petition till the next date of hearing.

10. The matter 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)**