

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 122/MP/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 18.11 (g) of the Request for Proposal for purchase of power bearing Tender Specification No. 24/SPATC-155/2015 dated 22.12.2015 and read with terms and conditions of the Letter of Intents dated 18.01.2016, 28.01.2016 and 30.01.2016 issued by Uttar Pradesh Power Corporation Ltd. to Tata Power Trading Company Ltd. seeking direction of payment of late payment surcharge on account of delay by UPPCL in honouring the invoice(s) raised by Petitioner in terms of Order dated 17.09.2018 in Petition No. 158/MP/2017 issued by this Commission.

Date of Hearing : 29.7.2022

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

Petitioner : Jindal India Thermal Power Ltd. (JITPL)

Respondents : Uttar Pradesh Power Corporation Ltd. (UPPCL) and Anr.

Parties Present : Shri Aniket Prasoon, Advocate, JITPL
Shri Nimesh Jha, Advocate, JITPL
Ms. Akanksha Tanvi, Advocate, JITPL
Shri Rishabh Bhardwaj, Advocate, JITPL
Shri Pula Srivastava, JITPL
Shri Sitiesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Nived Veerapaneni, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL
Shri Venkatesh, Advocate, TPTCL
Shri V. M. Kannan, Advocate, TPTCL
Ms. Isnain Muzamil, Advocate, TPTCL
Shri Mohit Mansharmani, Advocate, TPTCL
Ms. Sarika Jerath, TPTCL
Ms. Vaishnavi Aiyer, TPTCL

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 direction against the Respondent No.1, UPPCL for payment of Rs. 5,90,52,713/- to the Petitioner towards Late Payment Surcharge (LPS) on account of delay in releasing the payment qua the differential amount on account of increase in Clean Environment Cess ('CEC') in terms of Article 18.11(g) of the Request



for Proposal ('RfP') for purchase of power dated 22.12.2015. Learned counsel mainly submitted the following:

(a) The Commission vide order dated 17.9.2018 in Petition No. 158/MP/2017 had held that the increase in the rate of CEC constituted Change in Law event under Article 18.11(g) of the RfP. Pursuant to issuance the said order, the Petitioner and the Respondent No. 2, Tata Power Trading Co. Ltd. ('TPTCL') repeatedly requested UPPCL to make payment of the principal payment of Rs. 5.12 crore towards the differential amount on account of increase in CEC towards supply of power by the Petitioner for the relevant period along with LPS.

(b) However, despite there being unequivocal directions issued in order dated 17.9.2018 regarding payment of differential amount on account of increase in CEC, UPPCL paid the same only on 24.5.2021 i.e. after a substantial delay of 32 months. Pursuant to the payment of principal amount, JITPL/TPTCL vide various communications requested payment of LPS. However, no response was received from UPPCL in this regard.

(c) While the Petitioner had not made any specific prayer for LPS in the Petition No. 158/MP/2017, the Commission, in its order dated 21.1.2020 in Petition No. 43/MP/2019, has already held that the subsequent claim of carrying cost/interest from the date of Change in Law event is not barred by the principle of res-judicata and Order II Rule II of the Code of Civil Procedure, 1908. Moreover, unlike the agreement in the said case, in the present case, Article 18.11(g) of the RfP specifically provides that on delay in payment, a surcharge of 1.25% shall be levied on the remaining unpaid dues for more than 30 days from the date of submission of the bill.

(d) The Petitioner is pressing for interim relief i.e. direction to UPPCL to release payment of 75% of the amount due i.e. 4,42,89,534.75/- against the invoices raised by the Petitioner in terms of the aforementioned order of this Commission.

(e) Similar relief was granted by the Commission vide Record of Proceedings for the hearing dated 26.5.2022 in Petition No.32/MP/2022 (DB Power Ltd. v. TANGEDCO). The Petitioner is also facing the similar hardships including difficulty in arranging the necessary finances for procurement of coal, etc. as were being faced by the generator, DB Power therein. Accordingly, similar interim direction as issued therein may also be passed in the present case.

3. Learned counsel for the Respondent No.1, UPPCL accepted the notice and objected to grant of any interim relief at this stage. Learned counsel submitted that the Petitioner ought to also place on record the agreement between the Petitioner and the Respondent No.2, TPTCL supporting its claim of LPS as the relevant clause and basis on which the Petitioner is claiming the late payment surcharge. Learned counsel for UPPCL further submitted that the issue concerns only the TPTCL and UPPCL and not the Petitioner herein. Learned counsel sought liberty to file reply to the Petition.

4. Learned counsel for the Respondent No.2, TPTLC accepted the notice and sought liberty to file reply to the Petition.

5. After hearing the learned counsel for the parties, the Commission ordered as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents and the Respondents to file their reply within three weeks after serving copy of the same to the Petitioner, who may file its rejoinder within three weeks thereafter.

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

(d) The prayer of the Petitioner for grant of interim relief(s) will be considered after taking into the account the response of the Respondent, UPPCL.

6. 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)**