

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 139/MP/2022

Subject : Petition seeking execution of the Order dated 5.11.2018 read with corrigendum dated 3.12.2018 passed by this Commission in Petition No. 159/MP/2017 and initiation of proceedings/action under Section 142, and Section 149 of the Electricity Act, 2003 read with Regulation 111 and Regulation 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against Respondent No. 1 i.e., Brihan Mumbai Electric Supply and Transport Undertaking for the non-compliance of the aforesaid order dated 05.11.2018 read with corrigendum dated 03.12.2018 passed by this Commission in Petition No. 159/MP/2017.

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 : Brihanmumbai Electric Supply and Transport Undertaking (BEST) 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 Harinder Toor, Advocate, BEST
Ms. Akanksha Das, Advocate, BEST
Shri R. R. Dubal, BEST
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 execution of the Commission's order dated 5.11.2018 read with corrigendum dated 3.12.2018 in Petition No. 159/MP/2017 and for initiation or proceedings/ action under Section 142 and Section 149 of the Electricity Act, 2003 against the Respondent No.1, BEST for non-compliance of the aforesaid order dated 3.12.2018. Learned counsel mainly submitted the following:



(a) Vide order dated 5.11.2018 read with corrigendum dated 3.12.2018 in Petition No. 159/MP/2017, the Commission had held the increase in the rate of Clean Energy Cess (CEC) as Change in Law event under Clause 17(E) of the Letter of Intent dated 14.1.2016 issued by BEST to Respondent No.2, TPTCL and that JITPL/TPTCL is entitled to recover from BEST the differential amount towards CEC for the period from 1.3.2016 till 30.6.2017 within 60 days from the date of the order.

(b) Despite clear direction given to BEST to make payment of differential amount towards increase in CEC within 60 days from the date of order, BEST has willfully and deliberately failed to honour the debit note raised by JITPL and TPTCL.

(c) While BEST has filed an appeal before the APTEL bearing No. 3 of 2019 challenging the said order and seeking stay on the implementation or operation of the said order, no stay has been granted by APTEL on the aforesaid order of the Commission.

(d) Considerable time has already been elapsed since the passing of the order dated 5.11.2018 and in absence of any stay by APTEL, the said order needs to be implemented. Accordingly, in the interim, the Respondent, BEST be directed to release payment of 75% of the amount due i.e. Rs. 3,27,25,665.75 (Rs. 1,99,02,018/- towards principal and Rs. 2,37,32,203/- towards delayed payment surcharge) against the invoices raised by the Petitioner in terms of the Commission order dated 5.11.2018 in Petition No. 159/MP/2017.

(e) The Commission, vide Record of Proceedings for the hearing 26.5.2022 in Petition No. 32/MP/2022 (DB Power Ltd. v. TANGEDCO) had allowed the similar interim relief by directing the Respondent, TANGEDCO to pay 75% of outstanding amount not under dispute during the pendency of the proceedings. Similar direction may also be issued in the present case.

3. Learned counsel for the Respondent, BEST accepted the notice and sought liberty to file reply to the Petition. Learned counsel further submitted that there is no privity of contract between the Petitioner and BEST and the said issue is currently pending for adjudication before the APTEL. Learned counsel submitted that initially the claim amount of the Petitioner was only Rs. 1.81 crore, which thereafter was grossly inflated by the Petitioner to tune of Rs. 1.99 crore and by levy of delay payment surcharge @ 1.25%, despite the Commission's order dated 5.11.2018 not providing for any such delay payment surcharge. Learned counsel submitted that the order dated 5.11.2018 in Petition No.159/MP/2017 has been challenged by BEST before the APTEL in Appeal No. 3 of 2019 along with IA seeking stay on the implementation of the said order and since the issue involved was short, both the parties agreed to hear the appeal and IA together. Owing to vacancy in the Court-I of the APTEL, the said appeal is being adjourned from time to time. However, recently APTEL vide order dated 15.7.2022 in IA Nos. 649 & 464 of 2022 has evolved a suitable mechanism for dealing with the appeals listed in Court-I. Learned counsel submitted that there is no lack of efforts on the part of BEST in pursuing the said appeal and as such there is no urgency brought out by the Petitioner in seeking directions against BEST. Learned counsel added that there is no deliberate delay or an attempt to defeat the order of the Commission by BEST and no directions ought to be issued at this stage prior to considering the reply of BEST in the matter.

4. In rebuttal, learned counsel for the Petitioner submitted that the Respondent, in absence of any stay by APTEL, BEST cannot be allowed to disregard the order of the

Commission and it ought to be directed to release the payment in terms of the said order to the Petitioner forthwith.

5. Learned counsel for the Respondent No.2, TPTCL accepted the notice and sought liberty to file reply in the matter. Learned counsel submitted that despite several round of communications between the parties, BEST has failed to release the payment.

6. 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.

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)**