

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Petition No. 195/MP/2022 along with IA. No. 49/IA/2022 & Diary No. 467/2022

- Subject** : Petition under Section 79(1)(c), (d) and (f) read with 142 of the Electricity Act, 2003 seeking adjudication of disputes as well as compliance of order dated 14.3.2022 passed by the Commission in Petition No. 145/TT/2018.
- Petitioner** : Essar Power Transmission Corporation Limited (EPTCL)
- Respondents** : Mahan Energen Limited (MEL) formerly known as Essar Power M.P. Limited (EPMPL) & 7 others
- Date of Hearing** : 15.11.2022
- Coram** : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Parties Present** : Shri Maninder Singh, Senior Advocate, EPTCL
Shri Sanjay Sen, Senior Advocate, MEL
Ms. Swapna Seshadri, Advocate, EPTCL
Ms. Sugandh Khanna, Advocate, EPTCL
Ms. Kirtika Khanna, Advocate, EPTCL
Shri Prabhas Bajaj, Advocate, EPTCL
Shri Hemant Singh, Advocate, MEL
Shri Lakshyajit Singh Bagdwal, Advocate, MEL
Shri Robin Kumar, Advocate, MEL
Ms. Suparana Srivastav, Advocate, CTUIL
Ms. Soumya Singh, Adocate, CTUIL
Ms. Astha Jain, Advocate, CTUIL
Shri Nitin Gaur, Advocate, MPPMCL
Shri Swapnil Verma, CTUIL
Shri Ranjeet S Rajput, CTUIL
Shri Bhaskhar Wagh, CTUIL
Shri Ajay Upadhyay, CTUIL
Shri Kavya Bhardwaj, CTUIL
Shri Yogeswar, CTUIL
Shri Sidharth Sharma, CTUIL
Shri Ashok Rajan, POSOCO
Shri Debojkit Majumadar, POSOCO
Shri Alok Mehra, POSOCO



Record of Proceeding

The learned senior counsel for the Petitioner made the following submissions:

a. The Commission vide order dated 14.3.2022 held that the additional tariff on account of increase in the capital cost of Mahan-Sipat transmission line due to change in the configuration from triple Moose Conductor to Quad Moose Conductor shall be borne by Essar Power Madhya Pradesh Limited (EPMPL) (now Mahan Energy Limited) and the remaining 76% of the capital cost of Stage-II shall be included in PoC mechanism. The Commission's order dated 14.3.2022 in Petition No. 145/TT/2018 is required to be implemented in letter and spirit.

b. As per the Supreme Court judgements in case of TANGEDCO Vs. PPN Power Generating Co. Ltd (2014) 11SCC 53 and State of Gujrat Vs. Utility Users Welfare Assn. (2018) 6 SCC 21, the order passed by the Commission is final and binding upon the parties, subject to judicial review. Thus, order dated 14.3.2022 being judicial order ought to be complied with and there can be no ground for non-compliance of the said order.

c. Referring to letter dated 11.11.2022 by CTUIL to NLDC for regulation of power supply of MEL for default in payment due as per Electricity (Late Payment Surcharge & Other related matters) Rules, 2022 ("LPS Rules, 2022), it was submitted that the Petitioner stood paid with respect to the amount as determined in the provisional tariff order dated 14.3.2019 in Petition No. 145/TT/2018. In the said letter, the money referred is the outstanding amount for the CTUIL which is required to be paid by MEL to CTUIL. The same does not give the right to CTUIL to make any deductions from the amount due to the Petitioner.

d. Pursuant to provisional tariff order dated 14.3.2019, the Petitioner was paid annual transmission charges of about ₹333 crore through PoC pool. However, by the Commission's order dated 14.3.2022, the Petitioner's annual tariff receivable for 2018-19 is revised to ₹336 crore approximately.

e. Referring to MEL's letter dated 7.6.2022 to CTUIL, learned senior counsel for the Petitioner submitted that the statement made in the said letter that CTUIL is an operational creditor is incorrect. As per Section 3(11) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the amount paid to the Petitioner in terms of the provisional order dated 14.3.2019 cannot be regarded as outstanding amount and hence cannot be termed as 'debt' so as to fall within the ambit of IBC.

f. Therefore, neither CTUIL nor the Petitioner can be considered as operational creditor. The amount paid under the provisional order dated 14.3.2019 stands paid with respect to Petitioner and CTUIL has no jurisdiction to make illegal and impermissible deductions under the grab of provisions of the IBC. No deductions by CTUIL are permissible in terms of the order dated 14.3.2022 in Petition No. 145/TT/2018 or in terms of any rules, Regulations or the Electricity Act, 2003.



g. The Petitioner was receiving provisional tariff of ₹333.05 crore from the PoC Pool from September, 2018 and now that the final tariff recoverable from PoC Pool has been determined by the Commission to be ₹261.96 crore. CTUIL has taken the position that approximately ₹296.29 crore has to be paid back to the PoC Pool. The Petitioner is receiving only around ₹2 crore per month on an average for O&M Expenses.

h. Accordingly, the Commission may direct CTUIL implement the order dated 14.3.2022 in letter and spirit and to release 76% of the transmission charges as determined by Commission by the order dated 14.3.2022 without making any adjustments.

2. The Petitioner filed IA No. 49/IA/2022 seeking directions to MEL to pay the invoice dated 23.5.2022 raised by CTUIL and also to direct CTUIL to maintain status quo with respect to disbursement of transmission charges from the PoC Pool and release the transmission charges as per the directions in order dated 14.3.2022 in Petition No. 145/TT/2018 without making any adjustments.

3. Learned senior counsel for the Petitioner submitted that an Interlocutory Application (IA) has been filed bearing Diary No. 467/2022 by the Petitioner seeking directions to CTUIL to maintain status-quo ante and release the transmission charges determined for the Stage II assets (with effect from 14.3.2022) in terms of the Commission's order dated 14.3.2022 without making any adjustments.

4. The learned counsel appearing for MEL, Respondent No. 1 made the following submissions:

- a) MEL filed a Review Petition No. 27/RP/2022 against the order dated 14.3.2022 in Petition No. 145/TT/2018 for quashing the invoices raised by CTUIL and seeking directions to CTUIL to not to raise further bilateral transmission charges in term of order dated 14.3.2022 in Petition No. 145/TT/2018. The said Review Petition was heard on 29.7.2022 and the Commission reserved the order on admissibility of the Review Petition. Thus, same is pending adjudication.
- b) MEL took over EMPL through the resolution process under the IBC, hence, for the period from September, 2018 to December, 2021, it is not liable to pay the transmission charges. There cannot be any past claim of any entity prior to taking over, whether contractual or statutory, which survives, and the Commission had no jurisdiction to take any cognizance of the transmission charges, which have been wrongfully directed to be imposed upon the MEL in terms of the Commission's the order dated 14.3.2022.
- c) As per CTUIL's letter dated 11.11.2022 to NLDC regarding regulation of power supply of MEL, MEL's STOA has been stopped and as a result its 1200 MW of power is not being evacuated. MEL would file an IA in this regard before the Commission.



- d) Erstwhile company EPMPPL relinquished its entire long Term Open Access with effect from 12.4.2017 and 4.5.2018 for 750 MW and 450 MW respectively and as such no transmission charges can be levied upon MEL post such relinquishment.
- e) The Petitioner has filed Writ Petition in the Hon'ble Delhi High Court on 15.11.2022 praying for issuance of writ of Mandamus directing WRLDC to comply with Regulation 7 of the LPS Rules, 2022 ('LPS Rules,2022') and to regulate the STOA of MEL for non-payment of transmission charges and that the Petitioner in the instant petition is also seeking the same relief.
- f) MEL has also moved an application before the Hon'ble Delhi High Court in the Writ Petition filed by the Petitioner and the Hon'ble High Court has directed MEL to approach this Commission challenging the action of WRLDC in stopping the STOA.
- g) Accordingly, the issue for determination in the instant petition is whether there is any obligation on the part of MEL to pay and the same cannot be decided pending adjudication of the said Review Petition which put forth the above submissions.

5. The learned counsel for the CTUIL made the following submissions:

- a) The role of CTUIL in billing, collection and disbursement of transmission charges is governed by the 2020 Sharing Regulations. The difference in the transmission charges approved provisionally and in the final order by the Commission are required to be adjusted as provided under Regulation 7(7) of the 2014 Tariff Regulations. Accordingly, as there was difference in the transmission charges approved and finally, the CTUIL made 'adjustments' in transmission charges to be paid to EPMPPL and it is strictly in accordance with the regulations. Hence, it is incorrect to say that such adjustments/ deductions are illegal or impermissible in the eyes of law.
- b) As regard to any communication made by CTUIL with the Petitioner before making any deductions, the learned counsel for the Petitioner placed reliance on letter dated 31.3.2022 written by the Petitioner to CTUIL, and submitted that the said letter reflected that the Petitioner clearly had the knowledge as to how the necessary adjustments was required to be made by the CTUIL.
- c) The reference of CTUIL as Operational Creditor under the provisions of IBC is with regard to claim by CTUIL towards the relinquishment charges to be paid by EPMPPL and not the transmission charges.
- d) In terms of the tariff order dated 14.3.2022, CTUIL was under an obligation to raise the bilateral bills, which has been done by CTUIL. Thus, CTUIL has discharged its statutory obligations under the law.

6. In response to contention of MEL that the instant petition be decided after the adjudication of Review Petition, the learned senior counsel for the Petitioner referring



to the judgment of the Hon'ble Supreme Court dated 18.7.1984 in Hans Raj Dhir Vs. State of Himachal Pradesh submitted that once a case is decided, it is the bounden duty of the State and subordinate authorities to implement it. Thus, mere preferment of an appeal does not automatically operate as a stay of the decision under appeal or/ and till an application for stay is moved and granted by the appellate court.

7. In response to the reliance placed by CTUIL on Regulation 7(7) of the 2014 Tariff Regulations, learned senior counsel for the Petitioner submitted that the said clause is applicable only when the capital expenditure exceeds the actual capital cost incurred by more than 5%. Hence, in the instant case, neither the capital expenditure nor the capital cost has exceeded and accordingly the said Regulation is not applicable. As regards the reliance placed by CTUIL on letter dated 31.3.2022, learned senior counsel submitted that the said letter clearly reflected that the reimbursement bilaterally of approximately ₹300 crore has to be from MEL and accordingly CTUIL has billed MEL.

8. Learned counsel appearing for CTUIL and MEL sought time to file reply on the I.A filed by the Petitioner.

9. The Commission after hearing the parties directed the Respondents to file their reply to the petition as well as the IA by 12.12.2022 and the Petitioner to file rejoinder, if any, by 19.12.2022. The Commission also directed the parties to comply with the directions within the specified time and observed that no extension of time shall be granted.

10. The Petition along with the I.A. shall be listed for further on 20.12.2022.

By order of the Commission

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(V. Sreenivas)
Joint Chief (Law)

