

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 202/MP/2021

Subject : Petition for execution/implementation of the order dated 3.6.2019 passed under Section 79 of the Electricity Act, 2003 by this Commission in Petition No. 156/MP/2018, and initiation of proceedings under Section 142 of the Electricity Act, 2003 against Uttar Pradesh Power Corporation Limited and Uttar Pradesh Discom in relation thereto.

Date of Hearing : 22.2.2022

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

Petitioner : MB Power (Madhya Pradesh) Limited (MBPMPL)

Respondents : Uttar Pradesh Power Corporation Limited (UPPCL) and 5 Ors.

Parties Present : Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Shri Pratyush Singh, Advocate, MBPMPL
Shri Abhishek Gupta, Advocate, MBPMPL
Shri Sitesh Mukherjee, Advocate, UPPCL
Shri Abhishek Kumar, Advocate, UPPCL
Shri Karan Arora, Advocate, UPPCL
Shri Nived Veerapaneni, Advocate, UPPCL
Shri Ravi Kishore, Advocate, PTC

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 implementation of the Commission's order dated 3.6.2019 in Petition No. 156/MP/2018 allowing compensation to the Petitioner for various Change in Law events in terms of the Power Purchase Agreement dated 18.1.2014 and for initiation of proceedings under Section 142 of the Electricity Act, 2003 ('the Act') against the Respondents, UPPCL and distribution companies of the Uttar Pradesh for non-compliance of the said order. Learned counsel further submitted that the Respondent, UPPCL has arbitrarily and unilaterally deducted and withheld an amount of Rs. 72.85 crore from Change in Law invoices raised by the Petitioner till 28.2.2021 and has failed to pay carrying cost (Rs. 32.25 crore) and Late Payment Surcharge (approximately Rs. 100 crore) on the supplementary invoices raised by the Petitioner for Change in Law claims allowed by the Commission vide order dated 3.6.2019. The learned counsel further, in view of paucity of time, submitted that while the Commission may proceed to hear the matter on next date, an interim direction may be issued to the Respondents to pay 90% of the amounts due to the Petitioner.

3. Learned counsel for the Respondent, UPPCL strongly objected to grant of interim relief to the Petitioner. Learned counsel submitted that UPPCL has already filed its preliminary objections on the maintainability of the present Petition. He added that pursuant to the Commission's order dated 3.6.2019, UPPCL has already paid significant amount of Rs. 974.34 crore against the invoices raised by the Petitioner for Rs. 1047.20 crore after due verification and the remaining amount of Rs. 72.85 crore has not been paid owing to certain issues, which arose either consequent to or subsequent to the Commission's order dated 3.6.2019 and are not covered by the said order. Referring to certain disputed claims/ issues, learned counsel submitted that Petitioner has also claimed GST impact on O&M expenses, insurance and financial charges on the basis of the order dated 14.3.2018 issued in Petition No. 13/SM/2017 (as quoted and relied upon in the order dated 3.6.2019), which dealt with impact of introduction of GST and subsuming/ abolition of few taxes, duties and levies on 'coal' only. Similarly, the Petitioner has sought to claim carrying cost computed on the basis of monthly rests instead of annual rests. Learned counsel emphasized that UPPCL has complied with the Commission's order dated 3.6.2019 passed in Petition No. 156/MP/2018.

4. *In rebuttal*, learned counsel for the Petitioner submitted that despite direction of the Commission to file reply to the Petition vide Record of Proceedings for the hearing dated 18.11.2021, UPPCL failed to file its reply on merits and has only filed preliminary objections on maintainability of the Petition. Learned counsel further placed reliance on the order of Hon'ble Supreme Court dated 18.10.2012 in Civil Appeal No. 7524 of 2014 in the case of PTC India Ltd. v. GERC & Anr. and submitted that in the said order, the Hon'ble Supreme Court has categorically held that one of the objectives of the Electricity Act, 2003 is to ensure expeditious adjudication of the disputes raised by the parties and, therefore, issues of maintainability and jurisdiction, etc. ought to be decided finally along with the merits of the matter.

5. Considering the submissions made by the learned counsel for the parties and in view of the paucity of time, the Commission adjourned the matter and directed the Respondent, UPPCL to file its reply on the merits by 10.3.2022 with advance copy to the Petitioner, who may file its rejoinder, if any, by 18.3.2022.

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)**