

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 246/MP/2022 along with IA No. 56/IA/2022**

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions with regard to the Power Purchase Agreement dated April 22, 2007 with Coastal Gujarat Power Limited.

Date of Hearing : 14.9.2022

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

Petitioner : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and 9 Ors.

Parties Present : Shri Basava Prabhu Patil, Sr. Advocate, MSEDCL  
Shri G Saikumar, Advocate, MSEDCL  
Shri Ravi Prakash, Advocate, MSEDCL  
Shri Rimali Batra, Advocate, MSEDCL  
Shri Ssahel Sood, Advocate, MSEDCL  
Shri Varun Aggarwal, Advocate, MSEDCL  
Shri Sajjan Poovayya, Sr. Advocate, CGPL & TPCL  
Ms. Nehul Sharma, Advocate, CGPL & TPCL  
Shri Neel Rahate, Advocate, CGPL & TPCL  
Shri Shreshth Sharma, Advocate, CGPL & TPCL  
Ms. Raksha Agrawal, Advocate, CGPL & TPCL  
Shri Abhishek Kakker, Advocate, CGPL & TPCL  
Ms. Alvia Ahmed, Advocate, CGPL & TPCL  
Shri Shubham Arya, Advocate, PSPCL & Haryana Utilities  
Shri Ravi Nair, Advocate, PSCPL & Haryana Utilities  
Ms. Shikha Sood, Advocate, PSPCL & Haryana Utilities  
Ms. Reeha Singh, Advocate, PSPCL & Haryana Utilities

**Record of Proceedings**

At the outset, learned senior counsel for the Petitioner submitted that since the Petitioner has already paid to TPCL upfront an amount of Rs. 19.66 crore equivalent to the amount covered under the Letter of Credit (LC) for one month, there exist special equities in favour of the Petitioner and requested the Commission to admit the matter and to extend the injunction on invocation of LC as granted vide Record of Proceedings for the hearing dated 6.9.2022 till the disposal of the petition. Learned senior counsel further submitted that since TPCL had failed to meet its obligation of supply of power in terms of the Power Purchase Agreement dated 22.4.2007 for the period from 1.9.2021 to 15.10.2021 causing the Petitioner to source/schedule costly power from higher rate generators/open market leading to massive financial burden of



Rs. 172.38 crore, and adjust the same against the outstanding dues of TPCL. Learned senior counsel submitted that the Petitioner has, accordingly, prayed for as under:

*“(a) Direct Respondent Nos.1 & 2 to recall its letter seeking invocation of the LC of the Petitioner;*

*(b) In the interim, grant a stay on invocation of the LC in order to save irreparable damage to the Petitioner herein;*

*(c) Declare that Respondent Nos. 1 and 2 were in violation of their obligations due to non-supply of power under the MSEDCL PPA and therefore, liable to pay the loss accrued to the Petitioner on the said account;*

*(d) Pass any such further order or orders as this Commission may deem just and proper in the circumstances of the case;*

*(e) Direct the Respondent No. 1 to compensate MSEDCL for the amount of Rs. 172.38 crores for the period between 1.9.201 to 15.10.2021 with interest till payment at the rate of 1.25% per month;*

*(f) Direct the Respondent No.1 to resume its supply of electricity to MSEDCL in terms of the PPA and contracted capacity mentioned therein;*

*(g) Pass any such further order or orders as this Commission may deem just and proper in the circumstances of the case.”*

2. Learned senior counsel for the Respondents 1&2 strongly objected to the continuation of injunction on invocation of LC and submitted as under:

(a) For the period prior to the Section 11 directions, an amount of Rs.167.89 crore is outstanding against the Petitioner whereas for the period after the issue of the Section 11 directions, an amount of Rs.152.67 crore is outstanding. In addition, an amount of Rs. 32.94 crore is outstanding towards Late Payment Surcharge. Thus, total outstanding dues against the Petitioner are to the tune of Rs. 391.76 crore.

(b) As per the Petitioner’s own admission, the LC furnished by the Petitioner is in compliance with the Section 11 directions. If the injunction on its invocation is extended, TPCL would not be able to recover its outstanding dues for supply of power under the Section 11 directions.

(c) As on date, the Petitioner has been scheduling and procuring the power from TPCL’s Mundra Project under the Section 11 directions. However, such scheduling is being limited to the extent of LC amount as per the contracted power under the PPA i.e. 19.66 crore.

(d) The Commission vide order dated 13.9.2022 in IA No. 50/2022 in Petition No. 128/MP/2022 filed by the Respondents has, *inter-alia*, held that the procurers, who are not availing power under Section 11 directions, are liable to pay the fixed charges in accordance with the PPA and are also required to maintain the LC commensurate with the fixed charges for one week for their contracted power.

(e) TPCL is entitled to invoke/encash the LC for realization of the outstanding dues payable by the procurer as and when the procurer defaults in making the payment by due date. Further, the procurer is also required to reinstate the LC after TPCL encashes such LC for default in payment. Hence, any injunction on the

invocation of LC would adversely affect the right of TPCL to realize the outstanding dues for supply under the Section 11 directions. In such circumstances, no injunction on invocation of LC be allowed / extended.

3. Learned senior counsel for the Petitioner pointed out that TPCL had sought to invoke the LC for the outstanding dues relating to the Late Payment Surcharge accrued for the period prior to the Section 11 directions, and not for the period after issue of such directions. Learned senior counsel submitted that TPCL cannot agitate its entitlement to the claimed amount, if any, in the present case filed by the Petitioner. Learned senior counsel offered that the Petitioner is willing to make the upfront payment of Rs. 19.66 crore to TPCL in the next month as well as thereafter till the petition is heard. Learned senior counsel requested that till such time, the injunction on invocation of LC may be continued. In response, learned senior counsel for the Respondents 1&2 suggested that the Petitioner should first pay the LC amount as and when TPCL issues notice for invocation of LC and in the event of payment by the due date mentioned in the notice, TPCL will not proceed to invoke the LC. However, no injunction on invocation of LC be allowed.

4. After hearing learned senior counsel for the parties and having due consideration to their suggestions on the treatment of LC during the pendency of petition, the Commission observed that since TPCL's Mundra Project is currently operating under Section 11 directions, dues for the period prior to and post the Section 11 directions ought to be treated separately. The Commission further observed that prayers (c) to (g) of the Petitioner essentially relate to the supply period prior to the Section 11 directions and it would be appropriate to deal with such disputes between the parties/prayers along with the similar petitions filed by other procurers, namely, PSPCL and Haryana Utilities bearing Petition Nos.85/MP/2022 and 123/MP/2022 respectively.

5. Accordingly, the Commission directed that TPCL/CGPL shall not proceed to invoke/encash LC as furnished by the Petitioner for the dues relating to period prior to the Section 11 directions till the next hearing of the case. However, the Commission directed that TPCL/CGPL shall be at liberty to take necessary actions including invocation/ encashment of LC for the dues relating to the period post Section 11 directions keeping in view all the directions contained in the order dated 13.9.2022 in IA No. 50/2022.

6. The Commission issued the following directions:

(a) In the light of the directions in para 5 above, Prayers (a) and (b) made in the petition no more survive and accordingly, stand disposed.

(b) Admit and issue notice to the Respondents, limited to the prayer (c) to prayer (g).

(c) The Petitioner to serve copy of the Petition on Respondents and the Respondents to file their reply to the Petition limited to prayers (c) to (g), if any, 22.9.2022 after serving copy of the same to the Petitioner, who may file its rejoinder 26.9.2022 thereafter.

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

(e) IA No.56/IA/2022 filed for early listing of the Petition having served its purpose is disposed of.

7. The instant Petition shall be listed for hearing along with Petition Nos.85/MP/2022 and 123/MP/2022 which are listed for hearing on 27.9.2022.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Joint Chief (Law)**