

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 32/MP/2022**

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for recovery of amounts payable by the Respondent to the Petitioner against the Monthly Bills and the Late Payment Surcharge thereon under the Power Purchase Agreement dated 19.8.2013 entered into between the Petitioner and the Respondent

Date of Hearing : 26.5.2022

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

Petitioner : D.B. Power Ltd.

Respondent : Tamil Nadu Generation and Distribution Corporation Ltd.(TANGEDCO)

Parties Present : Shri Sajan Poovayya, Senior Advocate, DB Power Ltd.  
Shri Deepak Khurana, Advocate, DB Power Ltd.  
Shri Ashwini Kumar Tak, Advocate, DB Power Ltd.

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed inter *alia* seeking direction to the Respondent, TANGEDCO to pay outstanding amounts towards monthly bills for the period from March, 2020 to June 2020 and July 2021 to October 2021 and Late Payment Surcharge (LPS) on monthly bills for the period from July, 2020 to November, 2021. Learned senior counsel mainly submitted as under:

(a) The Respondent continues to take power from the Petitioner. However, it is not paying the outstanding dues.

(b) The Petitioner has filed an Interlocutory Application (IA) No. 33/2022 seeking interim payment of 75% of the outstanding amount. The outstanding amount as on 21.5.2022 towards unpaid monthly energy bills has accumulated to Rs. 387,17,73,183.00 and LPS thereon has accumulated to Rs. 165,14,17,544.00. In addition, there is an outstanding amount of Rs 2,39,54,735.00 towards POC charges and Rs 1,53,02,327.00 towards LPS on POC charges. Thus, the total outstanding liability of the Respondent on account of the above is around Rs 556.25 crore. There is also an outstanding amount of Rs 100,63,54,879.00 as

on 21.05.2022 towards change in law claims dues including LPS thereon, which is the subject matter of Petition No. 29/MP/2022 filed by the Petitioner.

(c) The liability of the Respondent to pay the aforesaid amounts is an admitted liability, which the Respondent has miserably failed to discharge. The Respondent has disputed only Rs. 6.62 crore of the aforesaid monthly mills i.e. enhanced tariff granted by the Commission in order dated 22.7.2019 passed in Petition No. 424/MP/2019 against which the Respondent has filed an Appeal in the APTEL wherein there is no stay. The Petitioner has already excluded the said amounts from the claim made in the present Petition.

(d) On account of non-payment of dues by the Respondent, the Petitioner is facing severe financial stress. On 28.4.2022, Ministry of Power has directed power generation companies to import coal to the tune of 10% of its requirement and blend with domestic coal. The Petitioner has been directed by Ministry of Power to import coal to the tune of 4,61,000 tons within next three months, which is estimated to cost about Rs.750 crore for supply of power to the Respondent. Further, Ministry of Power vide its letter dated 18.5.2021 has directed that in case by 15.06.2022, the power plants do not ensure that they blend coal at the rate of 15 % (orders for coal to be placed by 31.5.2022), then the domestic allocation of the concerned defaulter thermal power plants will be further reduced by 5%.

(e) The Petitioner has a strong *prima facie* case as the liability is an admitted liability and the balance of convenience lies heavily in favour of the Petitioner, and there is a real possibility of irreparable harm and injury being caused to the Petitioner. Therefore, the Commission may direct the Respondent to pay at least 75% of the outstanding amount, which would meet the ends of justice. Reliance was placed on the judgment of the Hon'ble Supreme Court reported at [(2004)4 SCC 6970 in the case of Deoraj v. State of Maharashtra

(f) The Petitioner has given an advance notice of the present IA along with copy of the same as well copy of the main Petition to the Respondent by e-mail dated 21.5.2022. The Petitioner counsel has also categorically informed the Respondent that the matter is listed for hearing before the Commission on 26.5.2022 and the Petitioner shall be pressing its prayer made in the present IA for directions to the Respondent to pay part amount. Reliance was placed on the judgment of the Hon'ble Supreme Court reported at [(2004)4 SCC 6970] in the case of Deoraj v. State of Maharashtra

3. In response to specific query of the Commission regarding amount of Letter of Credit (LC) available with the Petitioner and as to whether the Petitioner is encashing the same, learned senior counsel submitted that LC of Rs. 58 crore approximately is sufficient to cover dues of only one month, whereas the outstanding dues are for a period of eight months. The Respondent has furnished an unconditional amended LC only in the month of May, 2022 and prior to that the LC furnished by the Respondent was a conditional LC, which the Petitioner was unable to encash.

4. After hearing the learned senior counsel for the Petitioner, the Commission ordered as under:

(a) Admit. Issue notice to the Respondent.

(b) The Petitioner to serve copy of the Petition on the Respondent 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) It is expected that in the meantime, the Respondent shall pay 75% of the amount not under dispute before the next date of hearing preferably within two weeks of this order.

(d) Parties to comply with the above directions within the specified timeline and no extension of time shall be granted. Let a copy of the order be mailed to the respondent.

5. The Petitioner shall be listed for early hearing in due course for which separate notice will be issued.

**By order of the Commission**

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