

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2021

- Subject : Petition under Section 79 of the Electricity Act, 2003 for execution of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019; and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for noncompliance of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019.
- Date of Hearing : 14.6.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : DB Power Limited (DBPL)
- Respondents : Rajasthan Urja Vikas Nigam Limited (RUVNL) and 10 Ors.
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, DBPL
Shri Deepak Khurana, Advocate, DBPL
Shri Ashwini Kumar Tak, Advocate, DBPL
Shri Ravi Kishore, Advocate, PTC
Shri Anand K Ganesan, Advocate, Rajasthan Utilities
Ms. Swapna Seshadri, Advocate, Rajasthan Utilities
Ms. Ritu Apurva, Advocate, Rajasthan Utilities
Shri Jai Dhanani, Advocate, Rajasthan Utilities

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 execution of the order dated 15.1.2022 passed by the Commission in Petition No. 63/MP/2019. Learned senior counsel mainly submitted the following:

(a) More than two and half years have passed since issuance of aforesaid order by the Commission in favour of the Petitioner. However, the Respondents are yet to implement the said order by making payment to the Petitioner in terms thereof.

(b) Initially, the Respondents had sought to defer the implementation of the order dated 15.1.2022 on the ground of the filing of Appeal No. 68 of 2020 before the Appellate Tribunal for Electricity ('APTEL'), which is came to be dismissed by the APTEL vide judgment dated 20.9.2021. Now, the Respondents have sought to defer the implementation on the ground of the

filing of second appeal against the judgment of APTEL before the Hon'ble Supreme Court.

(c) The said appeal has already come up for hearing before the Hon'ble Supreme Court. However, no stay has been granted by the Hon'ble Supreme Court on the judgment of APTEL.

(d) In view of the above, the Commission vide Record of Proceedings for the hearing dated 15.2.2022 directed the Respondents to pay Rs.115.30 crore (i.e. 50% of the invoice amount raised by the Petitioner in terms of order dated 15.1.2020) within 15 days from the said order, which has been paid by the Respondents. However, in absence of any stay, the Respondents ought to be directed to implement the Commission's order dated 15.1.2020 and be directed to make payment of the remaining outstanding principal amount of Rs. 115.30 crore. In addition to above, there is also a liability of late payment surcharge to the tune of approximately Rs. 85 crore.

3. Learned counsel for the Respondents, Rajasthan Utilities, mainly submitted the following:

(a) Civil Appeal filed by the Respondents had come up for hearing before the Hon'ble Supreme Court only twice and during the last hearing on 30.3.2022, on the request of the Petitioner the matter was adjourned. Therefore, having taken a time before the Hon'ble Supreme Court, it is unfair on the part of the Petitioner to press for implementation of the order/direction of further payment in the present case.

(b) Considering the pendency of the Civil Appeal before the Hon'ble Supreme Court, the Commission vide Record of Proceedings for the hearing dated 15.2.2022 had already taken a view that the Respondents ought to make payment of 50% of the claimed amount, which has been paid by the Respondents.

(c) Further, the Commission, in the order dated 15.1.2020, has not adjudicated upon the claim amount, which is also being disputed by the Respondents. According to the Respondents, the principal amount would work out to approximately Rs. 190 crore only.

4. *In rebuttal*, the learned senior counsel for the Petitioner submitted that it is a settled law that mere pendency of appeal does not operate as stay of the order appealed against and in absence of any stay on the judgment of APTEL, the Respondents ought to be further directed to make at least part payment of the remaining dues.

5. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission, for the reasons already cited vide Record of Proceedings for the hearing dated 15.2.2022, directed the Respondents to pay Rs.57.65 crore (i.e. 50% of the balance amount against the invoice raised by the Petitioner in terms of order dated 15.1.2020) within 15 days from this order.

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)**