

**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 this 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 non-compliance of the order dated 15.1.2020 passed by the Commission in Petition No.63/MP/2019.
- Date of Hearing : 15.2.2022
- 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 and 10 Ors.
- Parties Present : Shri Deepak Khurana, Advocate, DBPL  
Shri Ashwini Kumar Tak, Advocate, DBPL  
Ms. Swapna Seshadri, Advocate, Rajasthan Utilities  
Shri Anand K Ganesan, Advocate, Rajasthan Utilities  
Shri Ashwin Ramanathan, Advocate, Rajasthan Utilities  
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 execution of the order dated 15.1.2020 passed by this Commission in Petition No. 63/MP/2019. Learned counsel mainly submitted the following:

(a) By order dated 15.1.2020 in Petition No. 63/MP/2019, the Commission has held that the Petitioner is entitled to claim compensation in terms of capacity charges for 61 MW for the period from 30.11.2016 to 31.7.2018, after off-setting the capacity charges, if any, earned on the said capacity during the relevant period and further directed the Petitioner to calculate and claim such compensation from the Respondents while sharing all relevant documents with them.

(b) Accordingly, the Petitioner raised its invoice for Rs.230,58,89,377.20 towards capacity charges for the period from 30.11.2016 to 31.7.2018 along with all relevant details in terms of the order dated 15.1.2020. However, the Respondents have failed to pay the said amount or any part thereof till date.

(c) The Respondents, Rajasthan Utilities had filed Appeal No. 68 of 2020 in the Appellate Tribunal for Electricity ('APTEL') challenging the aforesaid order of the Commission, which came to be dismissed by APTEL vide its judgment dated 20.9.2021.

(d) During the previous hearing of the matter on 11.11.2021, considering the submissions made by learned counsel for the Rajasthan Utilities that they have filed a Civil Appeal bearing No. 6668/2021 before the Hon'ble Supreme Court against the judgment of APTEL along with an application for stay and that the hearing may be deferred by four weeks, the Commission had adjourned the matter and directed the Respondents to bring on record stay order, if any.

(e) However, even after lapse of 3 months, there is no stay on the judgment of the APTEL. It is well settled principle of law that mere pendency of an appeal does not operate as stay or suspension of the order appealed against. The Respondents cannot be permitted to disregard the orders of this Commission and the APTEL until the outcome of their Civil Appeal before the Hon'ble Supreme Court especially when there is no stay granted.

(f) During the proceedings before APTEL, based on the agreement of the counsels for the parties, APTEL vide order dated 21.5.2021 had directed the parties to attempt to reach a consensus as to the interim arrangement that could be put in place pending the hearing of the main appeals. In terms of the above, the Petitioner vide its letter dated 2.6.2021 had called upon the Respondents to work out an interim arrangement for payment of capacity charges as awarded by the Commission vide order dated 15.1.2020. However, the Respondents vide letter dated 14.7.2021 outrightly rejected the Petitioner's request stating that they having filed appeal against the Commission's order, it was not possible for them to pay any amount as an interim arrangement.

(g) The Respondents, in their reply, have also raised certain contentions regarding the Petitioner having not declared the availability and not having the open access, etc. Besides the scope of the execution proceedings being limited and that the matter cannot be re-argued on merits thereunder, all such contentions have already been dealt with and rejected by this Commission and APTEL.

(h) The Petitioner is already facing a severe financial stress, which has also been taken note of by APTEL in its order dated 23.3.2021 in the IA filed by the Petitioner therein for the early listing of the appeals. Therefore, the Respondents may be directed to discharge their liability in terms of the order dated 15.1.2020 forthwith.

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

(a) Subsequent to the last hearing on 11.11.2021, the Respondents have mentioned the Civil Appeal before the Hon'ble Supreme Court thrice including through Solicitor General of India. Thus, the Respondents have made sincere efforts to ensure the early listing of the Civil Appeal along with the application for stay before the Hon'ble Supreme Court. However, despite their best efforts, the matter is yet to be listed.

(b) When the executing Courts are made aware about the party actively pursuing the IA for stay of the order, the Courts defer the execution proceedings.

In this regard, the reliance was also placed on the order of APTEL dated 11.2.2022 in Execution Petition No. 1 of 2022 (Vedanta Ltd. v. GRIDCO and Ors.).

(c) The Respondents are not at all delaying the present proceedings but are only availing their statutory right of second appeal under Section 125 of the Electricity Act, 2003.

(d) Based on the details submitted by the Petitioner, it is pertinent to note that for the period from 30.11.2016 to 26.3.2017, the Petitioner did not declare the capacity even up to 250 MW which was then approved capacity because it could not arrange open access even till 250 MW. Therefore, the question of it being in position to supply upto 311 MW does not arise. Similarly, for the period after the Hon'ble Supreme Court order dated 25.4.2018 till 1.8.2018 i.e. when the Petitioner started supply of 311 MW, the capacity charges ought to be restricted to the declared capacity only. Even after the Hon'ble Supreme Court's order dated 25.4.2018, the Petitioner continued to declare availability only upto 250 MW till 1.8.2018.

(e) As regards the contention of the Petitioner that the Respondents vide letter dated 14.7.2021 have refused to pay the amount to the Petitioner as an interim arrangement, it may be noted that under the guise of interim arrangement, the Petitioner vide its letter dated 2.6.2021 had asked for entire amount of Rs. 230.59 crore payable in terms of the Commission's order dated 15.1.2020 and, therefore, the said request of the Petitioner was not considered.

4. *In rebuttal*, learned counsel for the Petitioner submitted that the order dated 11.2.2021 of APTEL in the Execution Petition No.1 of 2022 relied upon by the Respondents does not settle any legal position and, therefore, cannot have precedential value. Also, the other party to the said Execution Petition, did not object to the request of adjourning the matter whereas in the present case, the Commission has already deferred the matter once by four weeks on the basis of the request of the Respondents. Learned counsel further submitted that the contentions raised by the Respondents on the merits of the case have already been dealt with in the orders passed by this Commission and APTEL.

5. After considering the submissions made by the learned counsel for the Petitioner and the Respondents, the Commission observed that the Respondents are yet to pay any amount against the claim of Rs.230.59 crore raised by the Petitioner in terms of the Commission's order dated 15.1.2020. The Commission observed that earlier the aforesaid amount was not paid by the Respondents on the ground of pendency of appeal and IA seeking stay of the order before the APTEL, which ultimately came to be dismissed by the APTEL vide judgment dated 20.9.2021. Thereafter, as recorded vide Record of Proceedings for hearing dated 11.11.2021, the Respondents sought to defer the present proceedings by four weeks in view of the Civil Appeal No. 6668/2021 filed before the Hon'ble Supreme Court along with the application for stay on the judgment dated 20.9.2021 and the said request was also acceded to by the Commission with direction to bring on record stay order, if any. However, admittedly, the said appeal/ application for stay is yet to be taken up before the Hon'ble Supreme Court and as on date there is no stay on the judgment of the APTEL. The Commission observed that it is a well settled principle of law that mere pendency of an appeal does not operate as stay or suspension of the order appealed against. It was observed that in an Appeal under Section 125 of the Electricity Act, 2003 any one or more of the grounds specified in

Section 100 of the Code of Civil Procedure Code ('CPC') are only to be raised and that there is a consistent finding of both the forums ( i.e, this Commission and APTEL) on the facts of the case regarding entitlement of the Petitioner as stated and probably only a substantial question of law is to be heard in the Second Appeal. It was also observed that admittedly the case being a money decree, a stay is to be granted after invoking provisions under Order XXI Rule 29 of CPC and ordinarily after taking security only.

6. Considering the financial stress of the Petitioner and absence of any stay, the Commission directed the Respondents to pay Rs. 115.30 crore (i.e. 50% of the invoice amount raised by the Petitioner in terms of the order dated 15.1.2020) within 15 days from this order failing which proceedings under Section 142 of the Act would be initiated against the officials of the Respondents for non-compliance of the directions of the Commission.

7. 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)**