

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 75/MP/2022**

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003, read with the Letter of Intent dated 13.02.2021, and Bid Document dated 17.12.2020, thereby seeking directions from this Commission for quashing erroneous Compensation Bills/ Tax Invoices raised upon the Petitioners by the Respondent qua levy of alleged liquidated damages, and also to restrain the said Respondent from levying IGST on such liquidated damages, payment of illegally withheld amongst with applicable Delay Payment surcharge and amongst other consequential reliefs.

Date of Hearing : 29.7.2022

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

Petitioners : Jindal India Thermal Power Ltd. (JITPL) and Anr.

Respondent : BSES Rajdhani Power Ltd. (BRPL)

Parties Present : Shri Hemant Singh, Advocate, JITPL  
Ms. Ankita Bafna, Advocate, JITPL  
Ms. Lavanya Panwar, Advocate, JITPL  
Shri Hasan Murtaza, Advocate, BRPL

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned counsel for the Petitioners submitted that the present Petition has been filed, *inter alia*, for quashing the erroneous compensation bills/ tax invoices raised upon the Petitioners by the Respondent, BRPL qua levy of alleged liquidated damages and to restrain the Respondent from levying IGST on such liquidated damages and consequently, refund the amount withheld by the Respondent along with applicable delay payment surcharge. Learned counsel referred the Petition and mainly submitted as under:

(a) The Petitioner No.2, Tata Power Trading Co. Ltd. had submitted the bids on behalf of the generating companies for sale and supply of power to the Respondent, pursuant to which the Petitioner No.1 was selected as source of supply of power to the Petitioner No.1 (through Letter of Intent dated 13.2.2021) which in-turn entered into back-to-back Power Sale Arrangement (PSA) with Respondent.

(b) The dispute in the present Petition concerns with an allegation of short supply of power by the Petitioners to the Respondent and the invoices/bills qua liquidated damages raised upon the Petitioners along with levy of liquidated damages as well as non-payment of such illegally withheld amount by the Respondent.



(c) The Respondent has calculated the liquidated damages on the alleged shortfall in supply of power by the Petitioner No.1, on a fortnightly basis, in derogation of the express terms and mandate of the LOI dated 13.2.2021 and the bid documents dated 17.12.2020, as the same ought to have been calculated on a monthly basis, if at all.

(d) The Respondent has wrongfully levied IGST on such liquidated damages, which otherwise is not leviable in the course of transmission and distribution of electricity.

(e) The bid document dated 17.12.2020 specifically stated that the bidder shall quote a single tariff at the delivery point which will be inclusive of all taxes, duties and cess etc. imposed by the Central Govt./ State Govt./local bodies.

(f) The liquidated damages are nothing but a claim for number of units short supplied at the pre-defined rate of @ 20% of the tariff. As such, liquidated damages being part of the overall tariff structure and power purchase cost of the Respondent, they are not subject to the IGST.

(g) The Petitioners are pressing for the interim relief i.e. direction to the Respondent to forthwith make payment of 75% of the deducted amount along with applicable delay payment surcharge subject to the outcome of the present proceedings to tide over the financial crisis situating as being faced by the Petitioner No.1

3. Learned counsel for the Respondent accepted notice and sought time to file reply to the Petition. Learned counsel further pointed out that though the Petition appears to have been filed on behalf of two Petitioners, it is supported by an affidavit of the Petitioner No.1 only.

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

(a) Admit. Issue notice to the Respondents.

(b) The Petitioners to serve copy of the Petition on the Respondents and the Respondents to file their reply within two weeks after serving copy of the same to the Petitioners, who may file their rejoinder within two weeks thereafter.

(c) The Petitioner No. 2 to file the requisite affidavit, as pointed out by the Respondent, if not already.

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

5. 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)**