

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 94/MP/2022**

- Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for seeking issuance of urgent directions upon the Respondents for making immediate payment of an amount of Rs. 39,50,89,662/- which has been illegally deducted by them from the monthly energy bills issued by the Petitioner for the period commencing from May' 21 to October' 21, and Rs. 26,50,88,621/- for the period November' 21 to December' 21 by unilaterally revising PAPP/ PPSA tariff on amount of a skewed and deliberate misinterpretation of the "Misdeclaration" provisions provided under the Article 11 of the Pilot Agreement for Procurement of Power/Pilot Power Supply Agreement alongwith interest/ carrying cost, and consequent judicial command for adhering to the provisions of the PAPP/ PPSA in their letter and spirit.
- Date of Hearing : 15.7.2022
- Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : SKS Power Generation (Chhattisgarh) Limited (SPGCL)
- Respondents : PTC India Limited and Anr.
- Parties Present : Shri Buddy Ranganadhan, Advocate, SPGCL  
Shri Hemant Singh, Advocate, SPGCL  
Shri Lakshyajit Singh Bagdwal, Advocate, SPGCL  
Shri Harshit Singh, Advocate, SPGCL  
Shri Ravi Kishore, Advocate, PTC  
Shri S. B. Upadhyay, Advocate, BSPHCL  
Ms. Anisha Upadhyay, Advocate, BSPHCL  
Shri Nishant Kumar, BSPHCL

**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 direction to the Respondents for making payment illegally deducted by them from the monthly energy bills issued by the Petitioner by incorrect and complete misinterpretation of the 'Mis-declaration' provisions provided under Article 11 of the Pilot Agreement for Procurement of Power ('PAPP')/ Pilot Power Supply Agreement ('PPSA') along with consequent reliefs. Learned senior counsel for the Petitioner further submitted as under:

(a) Article 11.2.1 of the PAPP/PPSA provides that "*Unless otherwise notified by the Supplier*", the declared availability shall be deemed to be 100% of contracted capacity at all times. This essentially means that the Petitioner is

permitted under the contractual arrangement to declare the availability lesser than 100% as per its plant availability.

(b) However, contrary to the above, the Respondent No. 2, BSPHCL by placing the selective reliance on Article 11.2.4 of the PAPP/PPAS has alleged mis-declaration on the part of the Petitioner, since it did not declare it to be available at the 100% of the contracted capacity.

(c) However, Article 11.2.4 itself states that mis-declaration is only if availability is determined lower than either 100% of contracted capacity or the reduced availability notified by the supplier. Mis-declaration happens when the generator is unable to schedule/generate electricity against the availability which is declared/ notified by it to the procurer. In present case, it is undisputed that the availability of power, which was declared, had been supplied by the Petitioner.

(d) During the relevant period in question i.e. 1.4.2021 to 31.10.2021, the scheduled declared by the Petitioner were duly accepted by the Respondents without there being any allegation of mis-declaration and it was only on 30.12.2021, after a span of almost 9 months of power being supplied, the Respondent, BSPHCL alleged the mis-declaration of availability by the Petitioner and unilaterally proceed to deduct the cumulative amount of approximately Rs. 66.01 crore from the monthly energy bill of the Petitioner.

(e) Such unilateral and arbitrary deductions by the Respondent, BSPHCL has led the Petitioner company to Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016. The application for initiation of CIRP against the Petitioner company has been admitted and the Resolution Professional (RP) having been appointed therein. Consequent to initiation of CIRP, the Petitioner has re-started the supply w.e.f 9.6.2022.

(f) The Respondent, PTC in its reply dated 3.6.2022 has supported the submissions of the Petitioner and has stated that there is no mis-declaration of availability as alleged by the Respondent No.2. Whereas, the Respondent No.2 has not filed any reply to the Petition despite notice.

(g) An identical issue has been considered by the Commission in Petition No.109/MP/2022, wherein the Commission vide Record of Proceedings for hearing dated 14.6.2022 has restrained the procurer therein from making any further deductions from the monthly bills of the Petitioner therein on the ground of alleged mis-declaration.

3. Learned counsel for the Respondent No.2, BSPHCL sought a week's time to file reply to the Petition. Learned counsel submitted that since the Petitioner company is admitted to CIRP and RP having been appointed therein to manage its affair, the Respondent was unable to serve its reply. Accordingly, learned counsel prayed for short accommodation to file reply in the matter. In response, learned counsel for the Petitioner clarified that there was no restrain on the Respondent No. 2 to serve its reply on the advocate-on-record, which is acting as per the mandate given by the RP or filing the same on e-filing portal of the Commission.

4. After hearing the learned counsel for the parties, the Commission granted last opportunity to Respondent No.2 to file its reply. Accordingly, the Respondent No.2 was directed to file its reply within two weeks with copy to the Petitioner, who may file its rejoinder within two weeks thereafter. The Commission further directed

the Respondents not to make any further deduction from the invoices raised by the Petitioner on the ground which is subject matter of the present Petition till the next date of hearing.

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)**