

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary No. 243/2022 along with Diary Nos. 245/2022& 247/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Power Purchase Agreement dated 9.11.2011 and Amended Power Purchase Agreement dated 1.2.2018 seeking quashing of Notice for Rectification dated 8.6.2022 issued by South Bihar Power Distribution Co. Limited, Bihar State Power (Holding) Co. Ltd. and North Bihar Power Distribution Company Limited.

Date of Hearing : 14.6.2022

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

Petitioner : GMR Kamalanga Energy Limited (GKEL)

Respondents : Bihar State Power (Holding) Co. Ltd. and 2 Ors.

Parties Present : Shri Sajan Poovayya, Sr. Advocate, GKEL

Record of Proceedings

The matter was mentioned by the learned senior counsel for the Petitioner through video conferencing.

2. Learned senior counsel for the Petitioner submitted that the present Petition has been filed seeking quashing of Notice dated 8.6.2022 issued by the Respondents ('Bihar Discoms') contrary to the express terms of the Power Purchase Agreement ('PPA') dated 9.11.2011 wherein the Respondents have threatened to adjust an amount of Rs. 220.6743 crore in respect of invoices raised by the Petitioner for the period from September, 2014 to March, 2022. Learned senior counsel mainly submitted as under:

(a) By the aforesaid notice, the Respondents have, *inter-alia*, submitted that the base value for calculating the escalated energy charge can only be modified at the beginning of each contract year to be the escalation index at the end of the previous contract year. As a consequence to the above, the Respondents have sought refund/ adjustment of the excess amount paid to the Petitioner with interest since the commencement of the PPA till the last cleared invoice within 15 days failing which necessary action will be taken by the Respondents towards adjustment of said amounts with interest.

(b) The aforesaid notice is contrary to the provisions of the PPA as well as the notification/applicable methodology on escalation index issued by the Commission.

(c) If the Bihar Discoms' interpretation is accepted, the escalation rate will be applied to the base value for the first six months. However, for the second tranche of 6 months (October to March), when this Commission notifies fresh

escalation rate, the base value will be reset to the value which existed as on 1st April. Such an approach will lead to completely ignoring the effect of inflation during the 1st six months and result in huge under-recovery and loss to the Petitioner and cannot be correct way to implement price escalation. Reference was placed on an illustration explaining the position taken by Bihar Discoms vis-à-vis position as per the Petitioner annexed as Annexure P-18 to the Petition.

(d) The invoices/bills raised by the Petitioner date back to September, 2014 and the Bihar Discoms made the payment against these invoices/bills without raising any dispute/protest. The notice dated 8.6.2022 seeking adjustment of approximately Rs. 220 crore, almost 8 years after commencement of supply in September, 2014, is also barred by limitation. In any case, under the PPA, the adjustment can be done, if not disputed by the Petitioner, upto only Rs. 6.5 crore in one contract year.

(d) Bihar Discoms are already liable to pay approximately Rs. 271 crore along with applicable late payment surcharge to the Petitioner on account of compensation payable to allowed Change in Law events pursuant to the orders/judgment of this Commission and Appellate Tribunal for Electricity.

(e) Copies of the Petition and IAs have already been served on the Respondents through e-filing portal of the Commission. Notice of early hearing and mentioning have also been served upon the respondents by mapping as well as separate service. However, the respondents have not appeared.

(f) In the above circumstances, the Commission may restrain the Respondents from taking any precipitative actions against the Petitioner till the listing of the present matter.

3. After considering the submissions of the learned senior counsel for the Petitioner, the Commission directed the Respondents not to take any coercive actions against the Petitioner in furtherance to their notice dated 8.6.2022 till the next date of hearing. Meanwhile, the registry to complete registration and numbering of the Diary Nos. 243 of 2022 and 245 of 2022, after removal of defects by the Petitioner, if any. As regards Diary No. 247 of 2022 filed by the Petitioner seeking listing of the Petition and IA on 14.6.2022, it has become infructuous and is, accordingly, disposed of.

4. The Petition along with IA 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)