

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Diary Nos. 372/2022 & 373/2022

Subject : Petition under Section 79(1)(b) and (f) read with Section 63 of the Electricity Act, 2003 for adjudication and directions with regard to the Power Purchase Agreement dated April 22, 2007 with Coastal Gujarat Power Limited.

Date of Hearing : 6.9.2022

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

Petitioner : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)

Respondents : Coastal Gujarat Power Limited (CGPL) and 9 Ors.

Parties Present : Shri Ramji Srinivasan, Senior advocate for the Petitioner
Shri Sajjan Poovayya, Senior Advocate for TPCL & CGPL
Shri Shreshth Sharma, Advocate for TPCL & CGPL

Record of Proceedings

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

2. The learned senior counsel for the Petitioner MSEDCL submitted that the Petitioner has filed Petition (Diary No. 372/2022) *inter-alia* seeking direction to Respondents No. 1 and 2, CGPL and TPCL to recall the letter seeking invocation of the Letter of Credit (LC) of the Petitioner. The learned senior counsel further submitted as under:

(a) The Respondent, CGPL has failed to meet its obligation of supply of power in terms of the Power Purchase Agreement (PPA) dated 22.4.2007 and due to such non-supply for the period from 1.9.2021 to 15.10.2021, the Petitioner was required to source/schedule the costly power from the higher rate generator/open market leading to massive financial burden of approximately Rs. 172.38 crore.

(b) The Petitioner was accordingly forced to adjust the said amount, along with other adjustments, against the balance outstanding of CPGL for the power supplied during the period from 12.4.2022 to 25.6.2022 and after such adjustment, the Petitioner released the amount of Rs. 327.30 crore to CGPL, clearing all outstanding of CPGL. However, CGPL, in gross abuse and misuse of the terms of the PPA and the Electricity Act, 2003, issued a letter to Canara Bank dated 29.8.2022 seeking invocation of Letter of Credit of the Petitioner under the PPA. Keeping in view that invocation of the LC would cause irreparable harm/loss to the Petitioner, the Petitioner has paid an additional payment of Rs. 19.66 crore (amount covered under LC) to CPGL under protest



and consequently issued a letter to Canara Bank dated 30.8.2022 not to initiate the invocation procedure of LC.

(c) In view of the above circumstances, the Petitioner has filed the present Petition, *inter-alia*, seeking direction to the Respondents 1 & 2 to recall its letter seeking invocation of the LC of the Petitioner.

(d) The Petitioner had also approached the Hon'ble High Court of Bombay in Writ Petition (L) No. 28222 of 2022 and since this Commission was not scheduled to sit until today, it had sought a temporary, time-limited relief so that its LC is not acted upon until the Petitioner takes up the present petition. The Hon'ble High Court vide its order dated 5.9.2022 has granted such ad-interim relief upto 7.9.2022. The learned senior counsel, accordingly, prayed that the said interim relief be further continued till such time the present matter is taken up for hearing by the Commission.

3. Learned senior counsel for the Respondents CGPL and TPCL submitted as follows:

(a) The submissions made on behalf of MSEDCL are based on erroneous facts and despite repeated reminders by the Petitioner seeking payments, MSEDCL has been deliberately abstaining from making such payment. The adjustments which are being relied upon by MSEDCL to say that nothing is owed to TPCL/CGPL are unilateral and de hors the PPA.

(b) The payments due can be broadly divided into two periods i.e. prior to Section 11 directions, which came into force on 5.5.2022 and post such directions. On both counts, payments are outstanding and as on date Rs. 442 crore is due upon MSEDCL.

(c) As per the directions issued by Ministry of Power dated 5.5.2022 and subsequent clarifications (direction), MSEDCL is required to maintain an adequate LC which is the primary source of payment for the power procured by it. Further, this Commission by way of its interim order dated 17.6.2022 in Petition No. 128/MP/2022 has directed all parties to comply with the Directions '*in letter and spirit*'. However, MSEDCL has failed to open LC as provided under the directions and has not been maintaining the LC for sufficient quantum to enable TPCL to procure coal in a timely manner and operate its plant in terms of the Directions.

(d) LC has been invoked towards LPSC amounts payable for a period prior to Section 11 directions. MSEDCL's own calculations as filed before the Commission show that such LPSC amounts are due and payable. Even after payment of Rs 19.66 crore, there remain outstanding amounts towards the LPSC payable and other dues. Accordingly, TPCL has rightfully and legally invoked the LC.

(e) Since the outstanding amounts are duly payable by MSEDCL to TPCL/CGPL, invocation and encashment of LC for Rs. 19.66 crore to partly address this unpaid LPSC amount is justifiable.

(f) In these circumstances, the matter should be taken up on urgent basis and submissions on behalf of TPCL/CGPL should be heard to this effect. TPCL may be permitted to file a brief affidavit on the issue of interim relief and said issue should be decided on the next date of hearing.

4. After hearing the learned senior counsels for the Petitioner and the Respondents, the Commission directed that the interim relief/protection to the Petitioner in terms of the order of the Hon'ble High Court of Bombay effective till the 7.09.22 shall continue till the next date of hearing. The Respondents CGPL and TPCL were directed to file affidavit as prayed, by 12.9.2022.

5. The matter shall be listed for hearing on 14.9.2022.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**