

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 27/RP/2022
alongwith IA No. 51/IA/2022**

Coram:

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

Date of Order: 21.11.2022

In the matter of:

Petition for review of order dated 14.3.2022 in Petition No. 145/TT/2018 under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Order 47 of the Civil Procedure Code, 1908.

And in the matter of:

Mahan Energen Limited,
(Formerly Known as Essar Power M.P. Limited),
Adani House, C-105, Anand Niketan,
New Delhi-110021.

....Review Petitioner

Vs.

1. Essar Power Transmission Company Limited,
Lower Ground Floor, Hotel Conclave Boutique,
A-20, Kailash Colony, New Delhi-1100048.
2. Central Transmission Utility of India Limited,
(Formerly known as Power Grid Corporation of India Limited),
Plot No.2, Near August Kranti Marg,
Sector 29, Gurugram, Haryana- 122001.
3. Power System Operation Corporation Limited,
National Load Despatch Centre,
B-9, Qutub Institutional Area,
Katwarai Sarai, New Delhi-110016.
4. Western Region Power Committee,
F-3, MIDC Area, Marol, Opposite SEEPZ,
Central Road, Andheri East, Mumbai-400093.



5. Essar Steel India Limited,
27th km on Surat-Hazira Road,
Hazira District, Surat, Gujarat-394270.
6. M.P. Power Management Company Limited,
Block No.11, Shakti Bhawan,
Vidyut Nagar, Jabalpur-482008.

...Respondents

For Petitioner : Shri Sanjay Sen, Senior Advocate, MEL
Shri Hemant Singh, Advocate, MEL
Shri Robin Kumar, Advocate, MEL
Shri M.R. Krishna Rao, MEL
Shri Chintan Mankad, MEL
Shri Vyom Shah, MEL
Shri Tanmay Vyas, MEL

For Respondent : Shri Anand K. Ganesan Advocate, EPTCL
Ms. Swapna Seshadri, Advocate, EPTCL
Shri Amal Nair, Advocate, EPTCL
Ms. Sugandh Khanna, Advocate, EPTCL
Shri P. S. Das, CTUIL
Shri Ajay Upadhyay, CTUIL
Shri Bhaskar Wagh, CTUIL
Shri Pratyush Singh, CTUIL
Shri Swapnil Verma, CTUIL
Shri Siddharth Sharma, CTUIL
Shri Ranjeet Singh Rajput, CTUIL

ORDER

The instant review petition has been filed by Mahan Energen Limited (hereinafter referred to as “the Review Petitioner”) seeking review of the order dated 14.3.2022 in Petition No. 145/TT/2018 (filed by Essar Power Transmission Company Limited (EPTCL)), wherein transmission tariff from COD to 31.3.2019 of 400 kV D/C Mahan-Sipat Transmission Line along with associated bays at Mahan and Sipat and 2x50 MVAR line reactors at Sipat Pooling Sub-station, 2x50 MVAR line reactors at Mahan Pooling Sub-station and 1x80 MVAR, 420 kV switchable bus reactor at Mahan TPS along with its associated 400 kV bay was approved



under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the “2014 Tariff Regulations”).

Background

2. The brief facts in the matter are as follows:

a. The Commission vide order dated 14.3.2022 in Petition No. 145/TT/2018, taking into consideration EPMPL’s letter dated 21.8.2009, wherein EMPMPL had agreed to bear the additional tariff on account of change in the conductor configuration of the Mahan-Sipat Transmission Line, held that the additional tariff on account of increase in cost of Mahan Sipat Transmission Line due to change in conductor configuration from triple moose conductor to quad moose conductor will be exclusively borne by EPMPL. The relevant portions of the Commission’s order dated 14.3.2022 is as follows:

“45. We, thus, note that vide letter dated 21.8.2009, EPMPL had agreed to bear additional tariff on account of change in conductor configuration (from triple moose to quad moose) of the 400 kV Mahan-Sipat Transmission Line. The Commission, taking cognizance of the said letter dated 21.8.2009 of EPMPL as well as taking into consideration no objection of CTU vide letter dated 8.5.2009, approved amendment to the transmission license of the Petitioner vide order dated 15.9.2009. Therefore, additional tariff on account of change in the configuration of conductor is required to be borne by EPMPL as committed by EPMPL in its letter dated 21.8.2009.

46. In terms of above, additional tariff on account of increase in cost of Mahan Sipat Transmission Line due to change in conductor configuration from triple moose conductor to quad moose conductor, is required to be determined that will be borne by EPMPL.”

“48. It is observed that the difference between the cost of D/C transmission lines with quad moose conductor and D/C transmission lines with triple moose conductor is about ₹38 lakh in 2018-19, i.e. the year in which the Mahan-Sipat Transmission Line achieved COD (it is about ₹39 lakh in January 2022). Thus, the capital cost of D/C quad moose conductor is about 24% more than D/C triple moose conductor.

Accordingly, in order to arrive at the capital cost corresponding to transmission line having configuration of triple conductor, 24% of the capital



cost is required to be further reduced. Tariff corresponding to this 24% of capital cost is to be borne by EPMPL. Tariff corresponding to the remaining 76% of the capital cost thus arrived shall be included in POC.”

b. On the basis of the Commission’s order dated 14.3.2022, the CTUIL raised bilateral invoice dated 23.5.2022 on the Review Petitioner seeking a payment of ₹291,30,17,620/- for the period commencing from September 2018 to December 2021 and invoice dated 2.6.2022 upon the Review Petitioner seeking a payment of ₹6,05,88,063/- for the billing month of June, 2022.

c. Aggrieved with the aforesaid order of the Commission dated 14.3.2022 in Petition No. 145/TT/2018 and the invoices dated 23.5.2022 and 2.6.2022 issued by CTUIL, the Review Petitioner has filed the instant review petition contending that it is not liable to bear the transmission charges.

3. The gist of the submissions made by the Review Petitioner in support of the review petition is as follows:

- (a) EPTCL filed Petition No. 145/TT/2018 and EPMPL was a Respondent in the said petition.
- (b) During the course of proceedings of the aforesaid petition EPMPL underwent Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code, 2016 (2016 Code). Interim Resolution Professional (IRP) made a public announcement for inviting/filing claims by the creditors (both operation and financial) against the erstwhile EPMPL, in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. CTUIL participated in the CIRP and was well aware of the IBC proceedings being initiated against EPMPL.

- (c) IRP issued Information Memorandum in terms of Section 29 of the 2016 Code which reflected the assets and liabilities of the corporate debtor meant to be dealt in CIRP. No claim/ demand with respect to the transmission charges (arising out of the proceedings of Petition No. 145/TT/2018) was made either by EPTCL or CTUIL.
- (d) Adani Power Limited (parent company of the Review Petitioner) submitted its resolution plan which was passed and approved by NCLT on 1.11.2021. By way of the aforesaid order, all past liabilities (whether crystallized or uncrystallised) stood extinguished. CTUIL participated in the above IBC proceedings initiated against EPMPL and also filed an IA, being I.A No. 3015/2021 seeking an admission of ₹26,325,400,000/- as operational debt against EPMPL which was disallowed by the NCLT and on 16.3.2022 the Review Petitioner took charge of EPMPL.
- (e) Being a party in the aforesaid CIRP, wherein CTUIL submitted its claim against the operational debt and deliberately not submitted any claim regarding the bilateral transmission charges in the CIRP, CTUIL now cannot make claim against MEL, which is the company wherein the debts and assets have been restructured and is now under the new management of the successful Resolution Applicant.
- (f) EPMPL has relinquished its entire Long-Term Open Access with effect from 12.4.2017 and 4.5.2018 of 750 MW and 450 MW



respectively and as such no transmission charges can be levied on the Review Petitioner post such relinquishment.

- (g) None of the aforesaid aspects were brought to the knowledge of the Commission by EPTCL or CTUIL during the course of proceedings in Petition No. 145/TT/2018 and hence, the Commission passed the impugned order dated 14.3.2022. Hence, there is “sufficient reason(s)” for review, as provided under Order 47 Rule 1 of the CPC, 1908 read with section 94(1) of the Act. It is submitted that there is an error apparent on the face of the record in view of the IBC proceeding and order of the NCLT.

4. The matter was heard on 29.7.2022 and order was reserved on admissibility.

5. During the hearing on 29.7.2022, the learned senior counsel for the Review Petitioner has submitted during the proceedings before the Commission in Petition No.145/TT/2018 that the Review Petitioner has taken over the management and control of EPMPPL after CIRP under the 2016 Code. . With the culmination of CIRP and approval of the Resolution Plan of the Review Petitioner on 1.11.2021, all the claims which do not find place in the approved Resolution Plan stand automatically extinguished with the approval of the Resolution Plan and as such no fresh claims outside the CIRP can be made against the Review Petitioner. Learned senior counsel for the Review Petitioner referring to the judgements of the Hon’ble Supreme Court submitted that the Review Petitioner is not liable to pay the transmission charges for the period from September 2018 to December 2021 as the dues have arisen after the resolution process and



therefore no transmission charges can be imposed upon the Review Petitioner in terms of the Commission's order dated 14.3.2022. Learner senior counsel has further submitted that EP MPL has already relinquished the LTA granted to it and as such no transmission charges can be levied on the Review Petitioner post such relinquishment. These facts were not placed before the Commission by neither EPTCL nor CTUIL at the time of issuing of the impugned order.

IA No. 51/IA/2022

6. The Review Petitioner has also filed Interlocutory Application No. 51/IA/2022 for condonation of delay of 65 days in filing of the instant review petition. The Review Petitioner has submitted that on receipt of the invoices raised by CTUIL, the Review Petitioner took time to analyse the Commission's order dated 14.3.2022 and to scrutinise the 14 years old record of EP MPL. This led to a delay of 65 days in filing of the review petition and has submitted that the delay in filing the review petition is not intentional and has prayed to condone the same. The Review Petitioner has further submitted that there are "sufficient reasons" for reviewing the order dated 14.3.2022 as provided under Order 47 Rule I of the CPC, 1908 read with section 94(1) of the Electricity Act, 2003.

7. We have considered the submission of the Review Petitioner made in IA No.51/IA/2022. The delay in filing the review petition appears to be bonafide and may be unintentional. Hence, we hereby condone the delay of 65 days in filing of the instant Review Petition and dispose of the IA No. 51/IA/2022.

8. We have perused the documents on record and considered the submissions of the learned senior counsel for the Review Petitioner. The parties



before the Commission in Petition No.145/TT/2018 had not apprised the Commission that EPMPPL is undergoing CIRP under the 2016 Code. We are of the view that the fact that the EPMPPL was undergoing CIRP under 2016 Code is of material significance in Petition No.145/TT/2018 and failure to bring it to the notice of the Commission is a “sufficient reason” for review of the order dated 14.3.2022 in Petition No.145/TT/2018. Accordingly, we admit the Review Petition and order notice to the Respondents.

9. The Review Petitioner is directed to serve a copy of the Review Petition on the Respondents at the earliest, if already not served, and the Respondents are directed to file their reply by 12.12.2022. The Review Petitioner shall file the rejoinder, if any, by 19.12.2022. The parties are directed to comply with above directions within the specified timeline and no extension of time shall be granted.

10. The matter shall be listed for further hearing on 20.12.2022. List the petition at the top of the board with the instruction to the parties that no adjournment shall be granted.

sd/-
(P. K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I. S. Jha)
Member

