

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/MP/2022

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 20th July, 2022

In the matter of

Petition under Section 142 of the Electricity Act, 2003 read with Regulations 111, 113 and 119 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 for execution of Order dated 19.3.2019 passed by the Commission and directions and initiation of appropriate action against the Respondent No.1 to 4 for non-compliance of the directions issued under Order dated 19.3.2019 in Petition No. 54/MP/2018.

And

In the matter of

NLC India Limited,
135/73, EVR Periyar High Road,
Kilpauk, Chennai – 600 010

.....Petitioner

Vs

1. Rajasthan Urja Vikas Nigam Limited,
Ground Floor, Vidyut Bhawan,
Janpath, Jaipur - 302005.

2. Jodhpur Vidyut Vitran Nigam Limited,
New Power House, Heavy Industrial Area,
Jodhpur - 342003

3. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur - 302005.

4. Ajmer Vidyut Vitran Nigam Limited,
Old Power House Hathibhata,
Jaipur Road, Ajmer - 305001.

5. Rajasthan State Load Dispatch Centre,
Ajmer Road, Heerapura, Jaipur – 302024.

6. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Vidyut Bhawan, Janpath, Jaipur – 302005.

.....Respondents



Parties present:

Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Shikha Sood, Advocate, NLCIL
Ms. Srishti Khindaria, Advocate, NLCIL
Shri Nambirajan, NLCIL
Shri Anil Kumar Sahni, NLCIL
Shri A. Srinivasan, NLCIL

ORDER

The Petitioner, NLC India Limited (in short 'NLCIL') has filed this petition seeking the following relief(s):

“(a) Admit the Petition and enforce/execute the Order dated 19.3.2019.

(b) Direct the Respondent no.1/ Rajasthan Discoms to comply with Order dated 19.3.2019 and pay the amount due under Order dated 19.3.2019 along with late payment surcharge till the date of discharge of the dues immediately.

(c) Direct the Respondent no.1/ Rajasthan Discoms, and its Directors to disclose on affidavit the status of all the assets (owned, possessed, controlled etc.) by Respondent no.1/ Rajasthan Discoms to enable the Hon'ble Commission to pass further orders in this execution.

(d) Initiate the proceedings against Respondent no.1/ Rajasthan Discoms under Section 142 of the Electricity Act, 2003 for non-compliance of the Order dated 19.3.2019 and

(e) Pass such other Order(s) and this Hon'ble Commission may deem just and proper in the circumstances of the case.”

Submissions of the Petitioner

1. The Petitioner, in the present petition, has mainly submitted the following:

(a) Petition No. 54/MP/2018 was filed by NLCIL for recovery of outstanding amount to NLCIL from Respondent No.1 towards annual fixed charges for its Barsingar Thermal Power Station) (hereinafter 'BTPS'), based on availability declared by NLCIL and recovery of the energy charges on scheduled energy as per the ABT scheme applicable;

(b) As the petition was filed in the month of January 2018, NLCIL in its petition had claimed the latest dues, then outstanding i.e. principal amount of Rs. 25.63 crore (after adjusting the DSM charges payable by NLCIL to Rajasthan Discoms of Rs. 12.88 crores, as on 31.12.2017) and the Delayed Payment Surcharge of Rs. 35.99 crores as on 31.12.2017;

(c) The Commission vide order dated 19.3.2019, decided the said petition in favour of NLCIL and held that the ABT mechanism is applicable to NLCIL's



Project and directed the Rajasthan SLDC to ensure the availability of declaration, scheduling, despatch and Deviation Settlement Mechanism and issuance of necessary monthly/weekly Energy Accounts/ Deviation Settlement Accounts etc. to be as per IEGC and other applicable regulations. Thus, this Commission had settled the issue of applicability of ABT mechanism for NLCIL's Project and the same was not challenged by the Rajasthan Utilities before the Tribunal and the order dated 19.3.2019 has attained finality;

(d) On the basis of the above order, the Rajasthan Discoms paid the principal amount of Rs. 25.63 crore in April, 2019 and May, 2019. The late payment surcharge was paid in May, 2019 by the Jaipur Discom and Ajmer Discom. The Jodhpur Discom however, paid the late payment surcharge only in October 2019 and November, 2019. The details of the monies paid by the Rajasthan Discoms to NLCIL is as under:

Date	Principal amount released by Discom (Rs in crore)			
	JVVNL	AVVNL	JdVVNL	Total Principal
22.04.2019	-	-	2.00	2.00
23.04.2019	-	-	2.00	2.00
24.04.2019	-	-	2.00	2.00
25.04.2019	-	-	2.20	2.20
15.05.2019	-	2.00	-	2.00
20.05.2019	-	2.00	-	2.00
22.05.2019	-	3.31	-	3.31
22.05.2019	10.12	-	-	10.12
Total Receipt	10.12	7.31	8.20	25.63

Details of Receipt of LPS Amount (Rs in crore)				
Date	JVVNL	AVVNL	JdVVNL	Total LPS
21-05-2019	12.96	-	-	12.96
23-05-2019	-	2.00	-	2.00
24-05-2019	-	7.07	-	7.07
23-10-2019	-	-	3.00	3.00
24-10-2019	-	-	1.00	1.00
25-11-2019	-	-	2.00	2.00
26-11-2019	-	-	2.00	2.00
27-11-2019	-	-	2.00	2.00
28-11-2019	-	-	0.37	0.37
Total Receipt	12.96	9.07	10.37	32.40
Add: TDS deducted by RUVNL	1.44	1.01	1.15	3.60

(e) Thus, as demonstrated above, the Rajasthan Discoms have paid the principal amount of Rs. 25.63 crore in terms of the Commission's order dated 19.3.2019, but has restricted the late payment surcharge amount to Rs. 35.99 crore only (i.e. the late payment amount as on 31.12.2017), even though the payment towards the late payment surcharge was done as late as November, 2019;



(f) NLCIL is entitled for late payment surcharge till such date the total outstanding dues is paid by the Respondent No.1/Rajasthan Discoms. This Commission vide its order dated 19.3.2019, had directed the Respondent No.1/Rajasthan Discoms to pay the amount within 30 days of order, but the Respondent No.1/Rajasthan Discoms delayed making the payments due to NLCIL, as evident from the table mentioned above. Thus, the Respondent No.1/Rajasthan Discoms, are seeking to take advantage of its own wrong and are depriving NLCIL of its legitimate dues, towards late payment surcharge, till the date of discharge of total dues by Respondent No.1/Rajasthan Discoms.

(g) This Commission, in paragraph 20 of the order dated 19.3.2019, allowed the late payment surcharge of Rs.35.99 crore, computed up to December 2017, as claimed by NLCIL. The Commission, had, in the said order, nowhere stated that the late payment surcharge is payable only upto 31.12.2017. The Respondent No.1/Rajasthan Discoms are raising hyper technical grounds for refusing to pay the legitimate dues of NLCIL;

(h) The additional amount of late payment surcharge amounting to Rs. 53.38 crore to be paid on under admittance of bills was raised by NLCIL along with debit notes dated 14.10.2019. In the debit notes dated 14.10.2019, late payment surcharge upto 31.8.2019 payable by the three Rajasthan Discoms, totaling Rs. 62.76 crore was raised.

(i) As on 30.9.2021, the total late payment surcharge billed by NLCIL upto September 2021, the late payment surcharge admitted by Respondent No. 1 and the net amount of late payment surcharge pending from Respondent no. 1 is as under:

LPS payable by Respondent no. 1/Rajasthan Discoms (Rs in crore)				
Month	JVVNL	AVVNL	JdVVNL	Total
LPS Debit Note dated 14.10.2019	24.36	17.53	20.87	62.76
LPS billed with monthly bills from Sept-2019 to Sept-2021	10.64	10.59	22.20	43.43
Total LPS billed by NLCIL till Sept-21	35.00	28.13	43.07	106.19
Less: Total LPS admitted by Respondent No.1 vide reconciliation dated 30.9.2021	0.86	4.87	14.92	20.65
Net amount of LPS pending and payable by Respondent no.1/ Rajasthan Discoms	34.14	23.26	28.14	85.54

(j) Despite various meetings, deliberations and correspondence exchanged between NLCIL and the Rajasthan Discoms/ Respondent No. 1 pertaining to the late payment surcharge of monthly bills as on 30.9.2021, the amount of



Rs. 85.54 crore has not been admitted by the Rajasthan Discoms/Respondent no.1. The copies of the bills/correspondences/ reconciliation statements between NLCIL & RUVNL on the issue of late payment surcharge are attached hereto;

(k) One of the reasons for the difference in the late payment surcharge payable is that the Rajasthan Discoms/ Respondent no. 1 have disputed the DSM charges calculated by NLCIL and admitted by the Commission in the order dated 19.3.2019 (while computing the principal amount of Rs. 25.63 crore). The DSM amount of Rs 12.88 crore, has already been settled by NLCIL, based on the calculation sheet furnished at the time of filing of Petition No. 54/MP/2018. At the time of reconciliation dated 30.11.2020 with NLCIL, the Respondent no.1 had revised the DSM amount to Rs.16.13 crores from Rs. 12.88 crores and is further claiming late payment surcharge on the balance amount, which amounts to Rs.3.25 crore;

(l) The breakup of the principal amount of Rs. 25.63 crore (for the period from 1.12.2011 up to 31.12.2017) was duly submitted by NLCIL before the Commission. The principal amount comprises of Rs.38.51 crores on account of Energy Charges and Capacity charges vis-a-vis the ABT methodology claimed by NLCIL from Respondent no. 1, minus the charges towards DSM of Rs. 12.88 crore payable by NLCIL to Respondent no. 1. The net principal amount submitted by NLCIL is Rs. 25.63 crores;

(m) There is no basis for the Rajasthan Discoms/ Respondent No.1 to unilaterally revise the DSM amount for the period from April, 2015 to Dec, 2017, after the Commission had duly considered that the principal amount outstanding as on 31.12.2017 is Rs. 25.63 crores i.e after adjusting the DSM charges payable by NLCIL to Rajasthan Discoms of Rs. 12.88 crores as on 31.12.2017.

(n) During the proceedings in Petition No. 54/MP/2018, the Respondent No.1/Rajasthan Discoms did not dispute the DSM charges adjustment of Rs. 12.88 crore. It is in this context that the Commission, in order dated 19.3.2019, observed that the amounts claimed by the Petitioner not having been disputed, the Respondent No. 1/Rajasthan Discoms are liable to pay to the Petitioner, the principal amount of Rs. 25.63 crore (as on 31.12.2017).

(o) The Respondent no.1/ Rajasthan Discoms have now at a belated stage sought to revise the DSM charges to Rs. 16.13 crore. In addition to the above, the Respondent no.1/ Rajasthan Discoms is seeking Late Payment Surcharge on the above amount for Rs.3.25 crore. The Respondent no.1/ Rajasthan Discoms having participated in the proceedings before the Commission in Petition no. 54/MP/2018 and having not disputed the amounts claimed by NLCIL, cannot not be permitted to raise fresh disputes regarding the



outstanding DSM charges and not make payments towards the legitimate dues of NLCIL.

(p) Thus, the Respondent no.1/ Rajasthan Discoms ought to pay Rs. 85.54 crore (payable as on 30.9.2021 to NLCIL) without any further delay. NLCIL will suffer irreparable loss if the Respondent no.1/ Rajasthan Discoms do not discharge the entire amounts due and outstanding to NLCIL on account of the order dated 19.3.2019 passed by the Commission as detailed above. The proposed Petition is emerging due to reopening of issues by the Rajasthan Discoms, which were settled by order dated 19.3.2019 in Petition no. 54/MP/2018 for the period from 2013 to 2017;

(q) Though RUVNL paid the amount as per the order belatedly, but disputed the workings in the subsequent reconciliation in November, 2020 in respect of DSM charges, adjusted by NLCIL, which was fully accepted by the Commission in the order. Further, in the reconciliation held in September 2021 also, RUVNL continued to dispute the late payment surcharge arisen due to the above;

(r) The Commission has the powers to enforce/execute its Orders and ensure compliance of its orders. It is well settled principle that every court/tribunal/judicial body has all the incidental and ancillary powers including power to execute their own order [(State of Karnataka V. Vishwabharathi House Building Coop. Society, (2003) 2 SCC 412; Union of India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453; M/s. Hal v. Commissioner of Commercial, 2014 SCC OnLine Ori 71; Arabinda Das v. State of Assam AIR 1981 Gau 19 (FB) [Guwahati High Court]:

(s) The Commission exercises regulatory powers in terms of Section 79 read with the applicable provisions of the Act, which includes, within its scope, power to enforce and to do all the things as may be necessary to ensure the enforcement and implementation of its orders. In this regard, reliance has been placed on the judgments of the Hon'ble Supreme Court: (Central Power Dist. Co. and Ors. v. Central Electricity Regulatory Commission and Anr. [2007 8 SCC 197]; Deepak Theatre v. State of Punjab [1992 1 Suppl. SCC 684].

(t) The action of Respondent no.1/ Rajasthan Discoms in making delayed payments due to NLCIL as per order dated 19.3.2019 is in direct contravention/violation of the Commission's directions and is actionable in terms of Section 142 of the Electricity Act. NLCIL is seeking the enforcement/execution of the order dated 19.3.2019 and initiation of proceedings under Section 142 of the Electricity Act, 2003. For the purpose of execution of the said Order, the Respondent no.1/ Rajasthan Discoms should be directed to disclose on affidavit and solemn verification the assets of Respondent no.1/



Rajasthan Discoms and its status including the charges/mortgages/pledge etc. over such assets, location of the assets etc.

(u) NLCIL would seek orders of this Hon'ble Commission for transfer of the decree passed by the Commission for execution to appropriate courts within whose jurisdiction the properties/assets are located.

In the above background, the Petitioner has prayed for the reliefs, as stated in paragraph 1 above.

Hearing dated 28.6.2022

2. The matter was heard on 'admission' through virtual hearing, on 28.6.2022. During the hearing, the learned counsel for the Petitioner reiterated the submissions made in the petition, as above. The Commission, after hearing the learned counsel for the Petitioner, reserved its order on the 'admissibility' of the petition. We now examine the issue of 'admissibility' of the petition.

Analysis and Decision

3. The present petition has been filed by the Petitioner under Section 142 of the Electricity Act, 2003 (the Act) read with Regulations 111,113 and 119 of the CERC (Conduct of Business) Regulations, 1999 for execution of the Commission's order dated 19.3.2019 in Petition No. 54/MP/2018 and initiation of appropriate action against the Respondents, for non-compliance of the directions issued in the said order. The Commission, in the said order dated 19.3.2019 had held the following:

"18. In the light of the above judgments, the submissions of the Respondents are rejected and we hold that this Commission has the jurisdiction on the generating station of the Petitioner NLCIL, which is a Central Government owned and controlled generating company. The non-implementation of ABT mechanism for this generating station and the denial of capacity charges including the deemed generation charges, payment of Energy charges and UI charges computed based on availability, scheduled generation and UI respectively by the Respondents is not in accordance to above mentioned judgment of the Hon'ble Supreme Court. ABT for the generating station is therefore applicable with all its consequences, without any limitation and exception.

19. Accordingly, Rajasthan SLDC (Respondent No.5) is directed to ensure the availability of declaration, scheduling, despatch and Deviation Settlement Mechanism



and issuance of necessary monthly/weekly Energy Accounts/ Deviation Settlement Accounts etc. as per IEGC and other applicable regulations in respect of this generating station.

20. Consequent upon the above, the amounts claimed by the Petitioner not having been disputed, the Respondent No. 1/Rajasthan Discoms are liable to pay to the Petitioner the principal amount of `25.63 crore (as on 31.12.2017) along with the delayed payment surcharge of `35.99 crore (as on 31.12.2017) towards capacity charges based on availability and energy charges based on energy scheduled by the respondents. The payments shall be made within 30 days of this Order. These Respondents are also directed to pay the fixed charges with effect from 1.1.2018 and onwards, based on availability and energy charges based on the quantum of energy scheduled by the Respondents.”

4. The Petitioner has submitted that though the Commission in the said order had directed the Respondents to pay the principal amount of Rs 25.63 crore along with the delayed payment surcharge of Rs 35.99 crore (as on 31.12.2017) to the Petitioner, within 30 days from the date of the order, the Respondents have delayed making the said payments. The Petitioner, while pointing out that it is entitled to Late Payment Surcharge (LPS), till such date the total outstanding dues were paid by the Respondents, has submitted that the refusal of the Respondents to pay legitimate dues of the Petitioner, amounts to non-compliance of the directions of the Commission, for which appropriate action may be initiated under Section 142 of the Act.

5. Admittedly, in the present case, the Respondents have made the payment of outstanding amounts, to the Petitioner, in terms of the order dated 19.3.2019. In view of this, we find no reason to initiate proceedings against the Respondents in terms of Section 142 of the Act. However, the submission of the Petitioner that since the Respondents have made the outstanding payments belatedly, it is entitled for LPS, till such date the total dues were paid by the Respondents, in our view, gives rise to a separate cause of action, for which the Petitioner may seek appropriate relief(s) through a separate petition, which will be considered in accordance with law.



Accordingly, the prayers of the Petitioner in the present petition, is rejected, as not maintainable.

6. Petition No.62/MP/2022 is disposed of as above at the admission stage.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

