

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.116/MP/2022

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 seeking, *inter alia*, quashing of the purported invoice dated 14.12.2021 raised by the Respondent No. 1 on the Petitioner and for refund of Rs 59,58,745/- wrongfully and illegally deducted by the Respondents.

Date of Hearing : 16.5.2023

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

Petitioner : DB Power Limited (DBPL)

Respondents : NTPC Vidyut Vyapaar Nigam Limited (NVVN) and Anr.

Parties Present : Shri Deepak Khurana, Advocate, DBPL
Shri Vineet Tayal, Advocate, DBPL
Ms. Nishtha Wadhwa, Advocate, DBPL
Shri Matrugupta Mishra, Advocate, NVVN
Ms. Ritika Singhal, Advocate, NVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Ms. Srishti Khindaria, Advocate, GUVNL
Shri Mitul Naik, GUVNL

Record of Proceedings

During the course of hearing, learned counsel for the Petitioner and the Respondent, GUVNL made detailed submissions in the matter.

2. Learned counsel for the Petitioner, *inter alia*, submitted that the Respondents, by an erroneous interpretation of Clause 24 of the RfP document, have deducted an amount of Rs.59,58,745/- towards compensation for shortfall of scheduling by the Petitioner during the period from 1.11.2021 to 30.11.2021. Learned counsel submitted that said Clause provides that both the parties would ensure the actual scheduling does not deviate by more than 15% of the contracted power as per the approved open access capacity for the monthly basis [Clause 24(i)] and further also provides for the compensation, to be payable to the other side, in case the deviation from the Seller's side [Clause 24 (iii)] and Procurer's side [Clause 24(ii)] is more than 15% of the contracted energy for which open access has been allocated on monthly basis. However, while raising the aforesaid demand for compensation onto the Petitioner, the Respondent, GUVNL has wrongfully included the deviation from its end as well and has considered this cumulative deviation against the allowed limit of 15%. The said clause nowhere provides for any cumulative deviation from the

Petitioner and NVVN/GUVNL, much less the same being trigger for payment of compensation thereunder. Learned counsel also pointed out that while computing the deviation from the Petitioner's end, the Respondents also included the non-supply by the Petitioner for the period from 4th to 6th November, 2021 despite the fact that GUVNL vide its e-mail dated 1.11.2021 had itself reduced the schedule to zero against the contracted capacity of 100 MW for such period.

3. Learned counsel for the Respondent, GUVNL, *inter alia*, pointed out that under the agreement dated 12.11.2021, the Respondent had the arrangement of supply only with NVVN and did not have any contract with the Petitioner, DBPL herein. Learned counsel submitted that as per the RfP and agreement, NVVNL was required to deliver the contracted power at the Gujarat STU's periphery and therefore, RfP/agreement provided that any dispute between GUVNL and NVVNL would fall within the jurisdiction of the State Commission. Learned counsel further submitted that insofar as the supply during 4th to 6th November, 2021 is concerned, immediately after the earlier e-mail (at 16:20 Hrs.) revising the schedule from DBPL to zero, GUVNL had sent another e-mail (at 17:25 Hrs.) revising the schedule to 50 MW to which NVVN replied that it had already made the downward revision as per the previous mail – thereby ignoring the subsequent e-mail of GUVNL. Learned counsel circulated a copy of the said e-mails exchanged in this regard. Learned counsel added that as regards inclusion of the deviations from GUVNL's side, it is in line with the spirit of the provisions of the Ministry of Power's Guidelines for Short-Term Procurement of Power by Distribution licensees – upon which the RfP & agreement was based – which required both the parties to ensure that the actual schedule does not deviate by more than 15% of the contracted power.

4. Learned counsel for NVVNL and DBPL opposed the tendering of copies of e-mail by learned counsel for GUVNL only during the course of hearing and that too without being supported by any affidavit. Learned counsels submitted that GUVNL ought to be directed to furnish such correspondence/e-mails on an affidavit. In response, learned counsel for GUVNL submitted while the Respondent does not have any objection towards filing of such correspondence/e-mails on affidavit, it was incumbent upon NVVN & DBPL to bring on record the complete correspondence.

5. After hearing the learned counsel for the parties, the Commission ordered as under:

- (a) GUVNL to file copies of the documents as relied upon during the course of hearing including the e-mails dated 1.11.2021 as exchanged with NVVN on an affidavit within three weeks.
- (b) In above affidavit, GUVNL and NVVV/DBPL to also indicate the deviation on the part of each other (excluding the deviation from its end) against contracted capacity for the supply period from 1.11.2021 to 30.11.2021 and consequent applicability of Cl. 24(iii) of RfP / Cl. 13(iii) of agreement to such deviation i.e. whether it triggers the limit of 15%.
- (c) DBPL and NVVNL may file their response to GUVNL's aforesaid affidavit, if any, within three weeks thereafter

6. Matter remains part-heard. The Petition shall be listed for hearing on 9.8.2023.

By order of the Commission

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