

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 160/MP/2023

Subject : Petition under Section 79(1)(f) and Regulation 45 of the CERC Tariff Regulations, 2014 and Regulation 59 of the CERC Tariff Regulations, 2019 seeking Commission's intervention to allow NLCIL to claim LPS from 1.1.2018 till date of disbursement of LPS on account of delay in payment against order dated 19.03.2019 in Petition No. 54/MP/ 2018.

Petitioner : NLCIL

Respondents : RUVNL and 3 others

Date of Hearing : **6.12.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Ms. Anushree Bardhan, Advocate, NLCIL
Ms. Sristi Khindania, Advocate, NLCIL
Ms. Surbhi Kapoor, Advocate, NLCIL
Ms. Akansha Wadhwa, Advocate, NLCIL
Shri Bipin Gupta, Advocate, RUVNL
Shri Paramhans, Advocate, RUVNL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner made detailed oral submissions in support of the prayer for the recovery of the Late Payment Surcharge, with effect from 1.1.2018 from the Respondents.

2. The learned counsel for the Respondent, RUVNL mainly submitted that the claim of the Petitioner is barred by limitation. Referring to the judgment of the Hon'ble Supreme Court in AP Power Coordination Committee & ors v Lanco Kondapalli Power Ltd & ors (2016) 3 SCC 46, the learned counsel submitted that in the present case, the last payment was made on 28.11.2019 and therefore, the time for the claim expired on 27.11.2022. He also submitted that since the present petition was filed in April 2023, the claim of the Petitioner for recovery of the LPS is time-barred. He accordingly prayed that the petition may be rejected as not maintainable.

3. On being pointed out by the Commission that liberty was granted to the Petitioner, vide Commission's order dated 20.7.2022 in Petition No.62/MP/2022 filed by the Petitioner, the learned counsel for the Respondents clarified that the Commission had disposed of the said Petition, holding that the Respondents have made the payments to the Petitioner. He, however, pointed out that the Commission while granting liberty to the Petitioner to claim the delayed LPS by a separate petition, had, in the said order, observed that the claims of the Petitioner will be considered in accordance with law. The learned counsel added that since no claim towards future interest was sought by the Petitioner, in the original petition, the present claim of the Petitioner is barred by the principles under Order 2 Rule 2 of the CPC, 1908, apart from the claim being time-barred.



4. In response, the learned counsel for the Petitioner mainly submitted that the claim of the Petitioner is not time-barred, as the issue regarding delay in LPS payments by the Respondents, was raised by the Petitioner in Petition No. 62/MP/2022, in which the Commission, vide its order dated 20.7.2022, had granted liberty to the Petitioner to claim the said relief separately. Accordingly, she submitted that the time spent in the proceedings (in Petition No. 62/MP/2022) cannot be included for the purpose of calculating the period of limitation of three years. She also pointed out that the Respondents, having admittedly delayed the payments to the Petitioner, cannot now take advantage of its own wrong and deny the relief sought by the Petitioner, on the ground that the claim is time-barred.

5. At the request of the learned counsels, the Commission, permitted the Petitioner and the Respondents to file their written submissions, on or before **29.12.2023**, after serving copy to the other.

6. Subject to the above, order in the Petition was reserved.

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

