

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.204/MP/2022 along with IA No. 16/2023

- Subject : Petition under Section 79(1) (f) of the Electricity Act, 2003 for adjudication of disputes between the Petitioners and the Respondent under the Agreement for Procurement of Power under Pilot Scheme-II dated 28.10.2021 entered between the Petitioner No.1 and the Respondent and the back-to-back Power Supply Agreement under the Pilot Scheme-II dated 22.10.2021 entered between the Petitioner No.1 and the Petitioner No.2.
- Date of Hearing : 15.5.2023
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioners : PTC India Limited (PTCIL) and Anr.
- Respondent : MB Power (Madhya Pradesh) Limited (MBPMPL)
- Parties Present : Shri Ravi Kishore, Advocate, PTCIL
Shri Keshav Singh, Advocate, PTCIL
Shri Dhruv Tripathi, PTCIL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO
Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Ms. Shefali Tripathi, Advocate, MBPMPL
Shri Abhishek Gupta, MBPMPL

Record of Proceedings

At the outset, learned counsel for the Petitioners pointed out that the Respondent, MBPMPL had approached the Hon'ble Delhi High Court in a suit being CS (COMM) No. 282/2022, *inter alia* seeking an injunction directing PTCIL to deliver the Performance Security furnished by the Respondent under the Power Purchase Agreement dated 28.10.2021 and the Hon'ble Delhi High Court vide order dated 29.4.2022 had granted an interim protection to the Respondent. Learned counsels submitted that PTCIL thereafter had filed IA No. 7249/2022 in the said suit under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the suit on the ground that disputes therein are covered under the Electricity Act, 2003 and need to be adjudicated by this Commission. The Hon'ble Delhi High Court, however, vide its order dated 13.1.2023 dismissed the said application and upheld its jurisdiction and in the said order, the Hon'ble Delhi High Court *inter alia* also



observed that this Commission did not have jurisdiction as the agreement had not come into force. Learned counsels submitted that on basis of the aforesaid order of Hon'ble Delhi High Court, the Respondent has moved IA No.16/2023 seeking the dismissal of the present Petition. Learned counsels submitted that the said suit before the Hon'ble Delhi High Court is only in respect of the return/ invocation of the Performance Security whereas the present Petition raises the dispute of the deemed termination notice issued by the Respondent being null & void and in violation of the provisions of the agreement. Learned counsels further submitted that the order of the Hon'ble Delhi High Court dated 13.1.2023 has been challenged by PTCIL before the Hon'ble Supreme Court in SLP No.5276/2023 wherein the Hon'ble Supreme Court vide order dated 5.4.2023 has *inter alia* observed that 'the proceedings before the Commission may continue in accordance with law and since the order of Hon'ble Delhi High Court is *sub judice* before it, the Commission would independently apply its mind and proceed but will not pass the final order in the matter'. Learned counsels, accordingly, submitted that the Commission may proceed with the hearing in the present matter.

2. Learned counsel for the Respondent, MBPMPL also referred to the order of the Hon'ble Supreme Court dated 5.4.2023 and submitted that the said SLP is further listed for hearing in the month of August, 2023. Learned counsel further submitted that in the said order, the Hon'ble Supreme Court, without prejudice to the rights and contention of the parties, has also directed to complete the pleading in the suit filed before the Hon'ble Delhi High Court. Learned counsel added that insofar as the continuation of the proceedings before this Commission is concerned, since the Respondent, by way of its IA, has also raised the issue of maintainability of the present Petition, the Commission has to also decide upon the said aspect prior to considering the merits of the case. Learned counsel sought liberty to place on record the aforesaid order of the Hon'ble Supreme Court along with the additional submissions of the Respondent in connection thereto. Learned counsel also pointed out that pursuant to the Record of Proceedings for the hearing dated 22.2.2023, the Petitioners are yet to file their response to the IA.

3. In rebuttal, learned counsels for the Petitioners submitted that the said IA has been moved by the Respondents solely on the basis of the order of the Hon'ble Delhi High Court dated 13.1.2023 and since the Hon'ble Supreme Court has now asked this Commission to proceed with the matter by independently applying its mind (i.e. without being influenced by the aforesaid order of Hon'ble Delhi High Court), no reply is necessary in the said IA as moved by the Respondent. Learned counsels for the Petitioners submitted that the Commission may proceed to hear the matter on maintainability as well as on merits together. Learned counsel for the Respondent agreed to the said proposition and submitted that the Commission cannot pass order in the present Petition in terms of order of the Hon'ble Supreme Court.

4. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent to file its additional affidavit placing on record the order of Hon'ble Supreme Court dated 5.4.2023 along with its comments within three weeks with copy to the Petitioners who may file their response thereon, if any, within three weeks thereafter. The Parties are also directed to complete the pleadings, if not completed, before the next date of hearing.

5. The Petition along with IA shall be listed for hearing on maintainability as well as on merits on 25.8.2023.

By order of the Commission

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