

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 270/MP/2022

- Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 read with Purchase Orders dated 4.2.2016 and 20.7.2018 for recovery of Late Payment Surcharge payable by distribution companies of State of Telangana to Sembcorp Energy India Limited for delayed payment.
- Date of Hearing : **12.7.2023**
- Coram : Shri Jishnu Barua, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : Sembcorp Energy India Limited (SEIL)
- Respondents : Telangana State Power Coordination Committee and 4 Ors.
- Parties Present : Shri Vishrov Mukerjee, Advocate, SEIL
Shri Yashavi Kant, Advocate, SEIL
Ms. Anamika Rana, Advocate, SEIL
Shri D. Abhinav Rao, Advocate, Telangana Discoms
Shri Rahul Jajoo, Advocate, Telangana Discoms

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking recovery of the outstanding Late Payment Surcharge ('LPS') payable by the Respondents Telangana Discoms. Learned counsel has mainly submitted as under:

(a) Total LPS claim of the Petitioner is Rs. 24.27 crore which comprises (i) LPS of Rs.22.02 crore payable on delayed payment of compensation for deviation in off-take of power against approved quantum under Purchase Order 38 dated 31.5.2016 for supply of 300 MW RTC power from 27.5.2016 to 20.5.2017 and (ii) LPS of Rs. 2.24 crore payable for the delayed payment of energy bills raised under Purchase Order 22 dated 20.7.2018 for supply of 50 MW RTC Power for the period from 1.8.2018 to 30.9.2018.

(b) Insofar as the limitation is concerned, the present Petition is well within the period of limitation for both of the above claims.

(c) The period of limitation commenced from the date when the cause of action arose, i.e. liability to pay LPS was crystallised.



(d) As to Purchase Order 38, the Petitioner had raised the consolidated invoices for Rs. 62.30 crore on TS Discoms for deviation in off-take of power supplied during the periods from May, 2016 to May, 2017 on 2.6.2017 and 26.12.2017. Despite repeatedly requesting them to release the amount and TS Discoms having also admitted the compensation payable as Rs. 59.19 crore (after the Petitioner extended a 5% waiver on the amount), the said amount was paid approximately 20 months later in tranches between 6.12.2019 and 26.12.2019. Since the LPS claim crystallised only post 26.12.2019, the period of limitation will begin from 26.12.2019 and expires on 25.12.2022. Whereas, the present Petition was filed on 25.8.2022 i.e. within the period of limitation.

(e) The Petitioner's LPS claims are within limitation as they are also covered under the Hon'ble Supreme Court's order dated 10.1.2022 in MA NO. 21 of 2022 & batch wherein the period between 15.3.2020 and 28.2.2022 stands excluded for the purpose of limitation, and the balance period of limitation remaining as on 3.10.2021, if any, shall become effective from 1.3.2022. In the present case, the balance period of limitation as on 3.10.2021 was approximately 14 months, which was available to the Petitioner post 1.3.2022.

(f) In any case, as held by the Appellate Tribunal For Electricity in its judgment dated 2.11.2020 in Appeal No. 10 of 2020 and Batch titled Power Company of Karnataka Ltd. v. Udupi Power Corp. Ltd., failure to pay LPS constitutes a 'continuing breach' and gives rise to a fresh cause of action until the breach continues, and thus, the bar of limitation would not apply.

(g) The Petitioner may be permitted to file its rejoinder to the reply filed by TS Discoms on the e-filing portal of the Commission.

2. Learned counsel for the Respondents, TS Discoms, mainly submitted as under:

(a) As per the provisions relating to the Purchase Order, compensation would be paid by the Respondents to the Petitioner for deviating from the permitted off-take limit of 30% of contracted energy, which would be computed cumulatively every month. Thus, the compensation bills were required to be raised by the Petitioner every month, and its "right to sue" for LPS in respect of unpaid bills accrues immediately after 30 days.

(b) Also, each monthly LPS accrual on an unpaid amount beyond 30 days of receipt of the bill is a distinct and separate cause of action. The cause of action for default in payment of the first compensation bill payment leading to LPS accrual arose on 1.8.2016 and the period of limitation of 3 years expired on 1.8.2019. Thus, the LPS claims for the months of August, 2016 to February, 2017 are time barred.

(c) The Respondents have already filed their reply, which may be considered.

4. In rebuttal, the learned counsel for the Petitioner submitted that at no prior point in time, TS Discoms had raised the issue that the Petitioner ought to have raised a monthly bill instead of a consolidated bill for claiming compensation for

deviation in off-take by TS Discoms and the said contention is merely an afterthought.

5. After hearing the learned counsels for the Petitioner and the Respondents, the Commission permitted the Petitioner to file its rejoinder to the reply filed by the Respondents within two weeks. The Commission also permitted the parties to file their respective written submissions, if any, within three weeks with a copy to the other side.

6. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

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