

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 319/MP/2019**

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of disputes between the Petitioner and the Respondent for direction for payment.

Petitioner : Damodar Valley Corporation.

Respondents : BYPL

Date of Hearing : **10.1.2023**

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

Parties Present : Shri M.G. Ramachandran, Senior Advocate, DVC  
Ms. Anushree Bardhan, Advocate, DVC  
Ms. Tanya Sareen, Advocate, DVC  
Ms. Shrishti Khindaria, Advocate, DVC  
Shri Aneesh Bajaj, Advocate, DVC  
Shri Subrata Ghosal, DVC  
Shri Biswajit Mandal, DVC  
Shri Bijoy Mukherjee, DVC  
Shri Amit Kapur, Advocate, BYPL  
Shri Buddy Ranganathan, Advocate, BYPL  
Shri Anupam Verma, Advocate, BYPL  
Shri Aditya Ajay, Advocate, BYPL  
Shri Rahul Kinra, Advocate, BYPL  
Shri Girdhar Gopal Khattar, Advocate, BYPL

**Record of Proceedings**

The case was called out for virtual hearing.

2. During the hearing, the learned counsel for the Petitioner circulated note of arguments and made oral submissions in the matter. She also submitted that the claim of the Respondent that payments have to be first adjusted towards current dues, then the principal amount and lastly towards LPS, is not acceptable and is against the general principle (of making adjustment first towards LPS and then the Principal) laid down by the Hon'ble Supreme Court in its judgment in Gurpreet Singh v UOI & ors (2006 (8) SCC 457). Accordingly, the learned counsel submitted that the Petitioner has the right to adjustments first towards LPS and then towards the Principal amount due.

3. In response, the learned counsel for the Respondent circulated brief note of submissions and made detailed oral submissions in the matter. He mainly submitted as under:



- (a) The issue of payments to the Petitioner is admittedly pending before the Hon'ble Supreme Court in W.P(C) No.105/2014 filed by the Respondent, wherein the Hon'ble Court vide its order dated 26.3.2014 had *inter alia* directed the Respondent to make payment of the current dues (with effect from 1.3.2014). This order is subsisting and the matter is pending consideration of the Hon'ble Supreme Court.
- (b) This Commission, in its order dated 29.2.2016 in Petition No.160/MP/2013 (Aravali Power Company v BYPL & ors), after taking note of the pendency of the aforesaid writ petition, had permitted the Petitioner therein, to withdraw the said petition, with liberty to approach the Commission, if any amount remains unpaid, after settlement of dues, in terms of the directions that may be passed by the Hon'ble Supreme Court.
- (c) The reliance made by the Petitioner to the judgment of the Hon'ble Supreme Court in Gurpreet Singh case, is not applicable, as there is no final order or decree determining the rights of the parties in the present case.

4. On a specific query by the Commission as regards the details of the payment mechanism being followed by the Respondent with other generating companies (viz, NTPC and NHPC) and the provisions in their PPAs, the learned counsel for the Respondent stated that the details would be provided in due course.

5. The learned Senior counsel appearing for the Petitioner clarified that the order of the Hon'ble Supreme Court dated 26.3.2014, directing payment of current dues by the Respondent, was only in the context of the pending disconnection by the generators and not with regard to apportionment of the payments. The learned senior counsel submitted that the Petitioner has not been restrained from apportioning the payments made firstly towards LPS and thereafter, to the pending principal amounts. He however, submitted that the Petitioner, if required, may be permitted to file written submissions on this issue.

6. The Commission, after hearing the parties, directed the Petitioner, to furnish the following additional information, along with their written submissions, after serving copy to the Respondent:

- (a) Correspondence exchanged between the Petitioner and the Respondent during the period from 11.1.2017 to 26.3.2018, particularly, with regard to the Dues, the Principal amounts, the Late Payment Surcharge (LPSC), and the methodology of adjustment of the payments received etc.,
- (b) Total Dues, Principal and LPSC as on the dates., 11.1.2017, 26.3.2018, 22.1.2021 and 31.12.2022 as per format below:

As on Date	As per DVC (in Rs)			As per BYPL (in Rs)		
	Principal	LPSC	Total	Principal	LPSC	Total
11.1.2017						
26.3.2018						
22.1.2021						
31.12.2022						



7. The Respondent shall submit the details of the payment mechanism followed by it with other generation companies (namely NTPC & NHPC) along with the relevant provisions in the respective PPAs.

8. The additional information, as in paras 6 & 7 above, shall be filed on or before **10.2.2023**, after serving copy to the other.

9. Since arguments are incomplete, the petition shall be listed again for hearing on **7.3.2023**.

**By order of the Commission**

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

