

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 53/MP/2023 along with IA No.11/2023**

Subject : Petition under Section 79 of Electricity Act, 2003, including Sections 79(1)(b) and 79(1)(f) read with the provisions of Power Purchase Agreement dated 17.05.2021 executed between the Petitioners and the Respondent No. 1, Teesta Urja Limited seeking setting aside of the letter dated 30.01.2023 issued by Respondent No. 1 purportedly under Clause 19.2 of the Power Purchase Agreement conveying its intention to terminate the aforesaid agreement and its consequential actions thereof.

Date of Hearing : 14.2.2023

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

Petitioners : Uttar Pradesh Power Corporation Limited (UPPCL) and 4 Ors.

Respondents : Teesta Urja Limited and Anr.

Parties Present : Shri Sitesh Mukherjee, Advocate, UPPCL  
Shri Tarun Johri, Advocate, TUL  
Shri Girish Chandra, Advocate, TUL  
Shri Jaideep Lakhtakia, TUL

**Record of Proceedings**

At the outset, learned counsel for the Respondent, TUL opposed issuance of any interim directions to TUL in terms of the prayers made by the Petitioners in IA No. 11/2023 and further submitted as under:

(a) In terms of the Power Purchase Agreement (PPA) dated 17.5.2021 as originally executed between TUL and UPPCL, UPPCL was required to execute 'Default Escrow Agreement' and 'Deed of Hypothecation' as condition precedent and also an unconditional, revolving and irrevocable Letter of Credit, 30 days prior to the Appointed Date.

(b) Since UPPCL was not able to fulfill its conditions precedent, a Supplementary PPA, relaxing these terms, was entered into on 8.10.2021 in which Default Escrow Agreement and Deed of Hypothecation was to be provided within 180 days from the Appointed Date and LC was to be provided prior to the Appointed Date (i.e. date of commencement of power supply being 20.10.2021). The prescribed period of 180 days from the Appointed Date has long gone and UPPCL failed to provide any of the above Payment Security Mechanism (PSM) to TUL till date.

(c) Initially, TUL had supplied the power to UPPCL for 11 days and for that too, the payment was received only after period of 5 months in 10 tranches. UPPCL has refused to provide the Payment Security Mechanism as provided under the

PPA, which was entered into pursuant to the competitive bidding process under Section 63 of the Act.

(d) UPPCL's reliance on the Ministry of Power's letters/orders dated 28.6.2019 and corrigendum dated 17.7.2019 for making an advance payment in lieu of Payment Security Mechanism is misplaced. In the subsequent letter dated 23.7.2019, it has been clarified by the Ministry of Power that the said order will not apply to State owned generating stations such as TUL herein. In any case, the said letters/orders of Ministry of Power supplement the provisions of contract and does not override/ supersede the express contract conditions.

(e) Insofar as the reliance placed on the Late Payment Surcharge Rules, the said Rules came to be notified on 3.6.2022 and by that time, UPPCL had already committed the breach of the terms & conditions of PPA by not providing the PSM as prescribed therein.

(f) There is no balance of convenience or *prima facie* case in favour of UPPCL requiring grant of interim prayers as made in IA No. 11 of 2023 at this stage. In any case, as per the scheme of the PPA, the supply period for each year was for the period from 1<sup>st</sup> May to 31<sup>st</sup> October and hence, there is no urgency in the matter as contended by UPPCL.

(g) TUL may be permitted to file reply in the matter.

2. In response, learned counsel for UPPCL referred to the various correspondences exchanged between UPPCL and TUL with regard to the *pro-forma* for Default Escrow Agreement and Deed of Hypothecation including TUL's letter dated 8.7.2022 founding them '*generally in order*' and pointed out that TUL vide its letter dated 4.11.2022 had itself permitted UPPCL to arrange LC, Default Escrow Account and Deed of Hypothecation by 31.3.2023 and even prior to expiry of such period, TUL proceeded to terminate the PPA. Learned counsel further added that whether the MoP orders/letters permits UPPCL to make an advance payment in lieu of PSM is an issue of merits to be taken up in main matter, at this stage, direction may be issued to TUL not to create any third party right on the PPA capacity as it will render the present matter infructuous.

3. Learned counsel for the Respondent, TUL opposed the grant of any such relief as prayed for by UPPCL at this stage. Learned counsel added that the party in breach of the provisions of the PPA cannot be permitted to seek any such relief. The learned counsel also stated that subsequent to TUL's letter dated 4.11.2022, UPPCL itself proceeded to encash TUL's performance security bank guarantee amounting to approximately Rs. 40 crore. Learned counsel submitted that prior to seeking commencement of supply, UPPCL has to first furnish the Payment Security Mechanism as per the provisions of the PPA.

4. After hearing the learned counsels for the parties, the Commission queried UPPCL as to whether UPPCL intends to furnish the Payment Security Mechanism as per the PPA, learned counsel for UPPCL replied in positive. Learned counsel submitted that as clearly reflected in various correspondences, UPPCL had already furnished the *pro-forma* for Default Escrow Agreement and Deed of Hypothecation to TUL but the matter got stalled on account of various unreasonable objections being raised by TUL thereto. Learned counsel sought liberty to file an affidavit indicating UPPCL's readiness to furnish the Payment Security Mechanism along with draft documents.

5. Keeping in view the submissions made by the learned counsel for the Petitioners and the Respondent TUL, the Commission permitted the Petitioner to file its additional affidavit indicating its readiness to provide the PSM as per the provisions of the PPA along with draft documents within two weeks with copy to the Respondent, who may file its response thereon within two weeks thereafter.

6. The Commission admitted the Petition and directed to issue notice. The Respondents may also file their reply to the Petition and IA, if any, within two weeks with copy to the Petitioners, who may file its rejoinder thereon within two weeks thereafter.

7. The Petition shall be listed for hearing on 28.3.2023.

**By order of the Commission**

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