

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2021

- Subject : Petition under Section 79 of the Electricity Act, 2003 for execution of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019; and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for noncompliance of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019.
- Date of hearing : **19.1.2023**
- Coram : Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member
- Petitioner : DB Power Limited (DBPL)
- Respondents : Rajasthan Urja Vikas Nigam Limited (RUVNL) and 10 Ors.
- Parties present : Shri Deepak Khurana, Advocate, DBPL
Shri. Vineet Tayal, Advocate, DBPL
Shri. Ashwini Kumar Tak, Advocate, DBPL
Shri. Ravi Kishore, Advocate, PTC
Shri. Keshav Singh, Advocate, PTC
Shri. Dhruv Tripathi, Advocate, PTC
Ms. Swapna Seshadri, Advocate, Rajasthan Utilities

Record of Proceedings

Case was called out for virtual hearing

2. The learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking execution of the order dated 15.1.2022 passed by the Commission in Petition No. 63/MP/2019. Learned counsel submitted as under:

(a) More than three years have passed since issuance of aforesaid order by the Commission. However, the Respondents are yet to implement the said order in as much as they have failed to make the full payment to the Petitioner in terms thereof.



(b) Initially, the Respondents had sought to defer the implementation of the order dated 15.1.2022 on the ground of the filing of Appeal No. 68 of 2020 before the Appellate Tribunal for Electricity ('APTEL'), which was dismissed by the APTEL vide judgment dated 20.9.2021. Subsequently, the Respondents had sought to defer implementation of the order on the ground of filing of second appeal against the judgment of APTEL before the Hon'ble Supreme Court.

(c) There is no stay granted by the Hon'ble Supreme Court and the Commission has consistently held that mere pendency of an Appeal is not a ground for not implementing the order. Accordingly, the Commission vide Record of Proceedings for the hearing dated 15.2.2022 directed the Respondents to pay Rs.115.30 crore (i.e. 50% of the invoice amount raised by the Petitioner in terms of order dated 15.1.2020) within 15 days from the said order, which has been paid by the Respondents.

(d) The Commission vide Record of Proceedings for the hearing dated 14.6.2022 had directed the Respondent to pay the 25% amount of Rs. 57.65 crore within 15 days from 14.6.2022 and the same has been paid.

(e) Since there is no stay by the Hon'ble Supreme Court, the Respondents be directed to pay the remaining 25% along with Late Payment Surcharge which has accumulated to Rs 98.68 crore.

3. *In rebuttal*, the learned counsel for Rajasthan Utilities submitted that the claim of the Petitioner is erroneous and contrary to the order of the Commission dated 15.1.2020. The Commission vide its order dated 15.1.2020 has held that the Petitioner is entitled to deemed capacity charges and there is no mention about Late Payment Surcharge. However, the Petitioner in the instant Petition has prayed for payment of the Late Payment Surcharge which is not permissible as per recent judgment of APTEL. She further added that the Petitioner, did not declare availability even up to 250 MW for the period from 30.11.2016 to 26.3.2017. Therefore, the question of the Petitioner being in a position to supply 311MW does not arise.

4. In response the learned counsel for the Petitioner submitted that the issue of non-declaration of availability has already been adjudicated in the order dated 15.1.2020 of the Commission and in the judgment dated 20.9.2021 passed by APTEL. Therefore, it is impermissible in law for the Respondents to seek to re-argue the said issue in the present execution Petition. Learned counsel submitted that the Respondents cannot go behind the decree. Further, previously the Respondents were seeking deferment of implementation of the order by contending that their appeal shall be heard by the Hon'ble Supreme Court shortly on interim relief, however, as there is no stay order by the Hon'ble Supreme Court, they are now raising frivolous pleas in order to delay the matter.

5. The matter remains part-heard.



6. The Petition shall be listed for hearing (final arguments) on 23.3.2023.

By order of the Commission

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