

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 236/MP/2017**

and

**Petition No. 78/MP/2018**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Ramesh Babu V., Member**

**Shri Harish Dudani, Member**

**Date of Order: 3<sup>rd</sup> October, 2024**

**In the matter of**

**Petition No. 236/MP/2017**

Petition under Section 79(1)(f) of the Electricity Act, 2003 against unilateral surrender of 100 MW power from Durgapur Steel Thermal Power Station in violation of the provisions of the PPA dated 14.5.2007 between DVC and MPPMCL

**And**

**In the matter of**

**Petition No. 78/MP/2018**

Petition under Section 79(1)(f) of the Electricity Act, 2003 against unilateral surrender of 400 MW power from Mejia Thermal Power Station, Units 5 & 6 and Chandrapura Thermal Power Station, Units 7 & 8 in violation of the provisions of the PPA dated 3.3.2006 between DVC and MPPMCL

**And**

**In the matter of**

Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata – 700 054

**.....Petitioner**

**Vs**

Madhya Pradesh Power Management Company Limited  
Block No.11, Shakti Bhawan, Rampur,  
Jabalpur-482 008

**.....Respondent**

**Parties present:**

Shri Venkatesh, Advocate, DVC

Shri Nihal Bharadwaj, Advocate, DVC

Shri Harsh Vardhan, Advocate, DVC

Ms. Ananya Dutta, Advocate, DVC

Shri Rajiv Shankar Dvivedi, Advocate, MPPMCL

Shri Ashish Anand Bernard, Advocate, MPPMCL

Shri Paramhans Sahani, Advocate, MPPMCL



## **ORDER**

Petition No. 236/MP/2017 and Petition No. 78/MP/2018 were filed by the Petitioner DVC under Section 79(1)(f) of the Electricity Act, 2003 seeking the following reliefs:

### **Petition No.236/MP/2017**

(a) *Declare that MPPMCL shall have the obligation to pay for the contracted capacity in terms of the provisions of the PPA dated 14.5.2007 read with the Regulations and Orders of this Commission for the entire duration of the PPA and declare that MPPMCL shall not be entitled to treat the PPA having been terminated;*

(b) *Declare that DVC shall be entitled to interest for the delayed payment at the rate of 1.5% per month as provided in the Tariff Regulations of this Commission; (c) Direct MPPMCL to pay the outstanding amount due as on date together with interest at the rate of 1.5% per month and further pay all recurring amounts due to MPPMCL in failure;*

(d) *Pass interim orders in terms of the prayer (c) above*

### **Petition No.78/MP/2018**

(a) *Declare that the Respondent-MPPMCL shall have the obligation to pay for the contracted capacity in terms of the provisions of the PPA dated 3.3.2006 read with the Regulations and Orders of this Commission;*

(b) *Declare that MPPMCL shall not be entitled to treat the PPA having been terminated from February 2018 contrary to the terms of the PPA dated 3.3.2016;*

(c) *hold that the Respondent-MPPMCL liable to pay the Tariff to the DVC namely the fixed charges and Energy Charges for the quantum of electricity scheduled by MPMCL and deemed fixed charges for the quantum of electricity declared available by the DVC but not scheduled by the Respondent-MPPMCL;*

(d) *Direct that the Respondent-MPPMCL to pay the amount of Rs. 437.32 crore due and outstanding to the DVC as on 1.2.2018;*

(e) *Award the cost of proceedings*

2. The Commission, vide a common order dated 26.7.2019, disposed of the said petitions, holding that the Petitions are maintainable and the Commission has the jurisdiction to adjudicate the disputes raised by the Petitioner DVC, in terms of Section 79 (1) (f) read with Section 79 (1)(a) of the 2003 Act. Against this common order dated 26.7.2019, the Respondent MPPMCL had filed Appeal No. 309/2019 before the Appellate Tribunal for Electricity (APTEL) and the APTEL vide judgment dated 28.8.2024, held that the disputes between the parties primarily relate to the termination of the PPAs, which is



a non-tariff dispute and thus referable to arbitration. Accordingly, APTEL, vide the said order, directed the Commission to appoint an arbitrator within one month from the date of the order and refer the dispute to him for adjudication as per law. The relevant portion of the APTEL's judgment dated 28.8.2024 is extracted below:

*"36. Thus, in view of the above discussion, we are unable to uphold the findings of the Commission in the impugned order. We make it clear that non-tariff disputes involving a generating company or a distribution licensee do not fall within the ambit of clause (f) of Section 79(1) of the Electricity Act, 2003 and are thus, arbitrable.*

*37. In the instance case, there is undisputedly a valid and subsisting arbitration clause contained in the PPAs. We have already held that the dispute between the parties primarily relates to the termination of the PPAs which is a non-tariff dispute and thus, referable to arbitration.*

*38. Hence, we find the impugned order of the Commission unsustainable in the eyes of law. Same is hereby set aside. The appeal stands allowed.*

*39. The Commission, shall within one month from this order, appoint an arbitrator and refer the dispute to him for adjudication as per law."*

### **Hearing dated 19.9.2024**

3. During the hearing of these Petitions, on remand, the learned counsel for the Petitioner DVC submitted that since it has filed a Civil Appeal (C.A. No.10480/2024) before the Hon'ble Supreme Court challenging the APTEL's judgment dated 28.8.2024, the hearing of these petitions may be deferred. The learned counsel for the Respondent, MPPMCL, submitted that the parties may be permitted to submit the name of an arbitrator after mutual consent prior to the next date of hearing. This was not objected to by the learned counsel for the Petitioner DVC. The Commission, after permitting the two parties to suggest the name of an arbitrator after mutual consent, adjourned the hearing of the petitions.

### **Hearing dated 27.9.2024**

4. During the hearing on 27.9.2024, the learned counsel for the Petitioner DVC and the Respondent MPPMCL pointed out that the Hon'ble Supreme Court on 23.9.2024, has dismissed the civil appeal (Civil Appeal No.10480/2024) filed by



the Petitioner DVC and has, based on the consent of the parties, appointed Mr. Justice K.M. Joseph, as the sole Arbitrator to adjudicate upon the disputes between the parties, in terms of the impugned order of APTEL dated 28.8.2024. The relevant portion of the Hon'ble Supreme Court's order dated 23.9.2024 is extracted below:

**ORDER**

*“We do not find any good ground and reason to interfere with the impugned judgment in view of the difference of language in Section 79(1)(f) of the Electricity Act, 2003, from Section 86(1) (f) of the 2003 Act. The power of the Central Electricity Regulatory Commission under Section 79(1)(f) is different from the discretion exercised by the State Electricity Regulatory Commission under Section 86(1)(f) of the 2003 Act.*

*The appeal is accordingly dismissed.*

*In view of the dismissal of the present appeal and with the consent of the learned counsel appearing for the parties who have requested the Court to nominate an Arbitrator, Mr. Justice K.M. Joseph, former Judge of this Court, is appointed as the sole Arbitrator to adjudicate upon the disputes inter se the parties and in terms of the impugned order dated 28.08.2024. The learned Arbitrator will make a declaration in terms of Section 12(5) of the Arbitration and Conciliation Act, 1996. Fourth Schedule to the 1996 Act shall apply.”*

5. Accordingly, Petition No. 236/MP/2017 and Petition No. 78/MP/2018 (on remand) are disposed of in terms of the above order of the Hon'ble Supreme Court.

**Sd/-  
(Harish Dudani)  
Member**

**Sd/-  
(Ramesh Babu V.)  
Member**

**Sd/-  
(Jishnu Barua)  
Chairperson**

