

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 61/MP/2023

- Subject : Petition under Section 79 including Section 79(1)(b), 79(1)(f) and 79(1)(k) of the Electricity Act, 2003 for seeking recovery of (i) delayed payment interest towards failure of the Respondent No. 1 to pay the invoices/ bills for supply of power within the stipulated contractual timeframe; and (ii) compensation along with interest towards failure of the Respondent No. 1 to off-take the minimum quantum of power in terms of the short-term contracts for the relevant period.
- Petitioner : IL&FS Tamil Nadu Power Co. Ltd. (ITPCL)
- Respondents : NTPC Vidyut Vyapar Nigam Limited (NVTN) and Anr.
- Date of Hearing : **27.2.2025**
- Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member
- Parties Present : Shri Neeraj Malhotra, Sr. Advocate, ITPCL
Shri Hemant Singh, Advocate, ITPCL
Shri Nirhant Kumar, Advocate, ITPCL
Shri Chetan Garg, Advocate, ITPCL
Ms. Lavanya Panwar, Advocate, ITPCL
Shri Jay Lal, Advocate, ITPCL
Shri Nimesh kumar, Advocate, ITPCL
Shri D. Abhinav Rao, Advocate, TSPCC
Shri Rahul Jajoo, Advocate, TSPCC
Shri Abhishek Das. Advocate, TSPCC
Ms. Shikha Ohri, Advocate, NVVN
Shri Kartik Sharma, Advocate, NVVN
Shri Iqra Khan, NVVN
Shri Vikas Kumar, NVVN

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition had been filed seeking recovery of (i) delayed payment interest for failure to pay the invoices/ bills of supply of power within the contractual timeframe and (ii) compensation, along with interest, towards failure to off-take the minimum quantum of power in terms of short-term contracts for the relevant period. Learned senior counsel further placed the reliance on

the relevant contractual provisions of the short-term contracts dated 11.4.2017, 25.1.2018, and 10.7.2018 and pointed out that the total outstanding dues are Rs.17.93 crores, comprising of Rs. 17.53 crores towards delayed payment interest and Rs.36.12 lakh towards compensation for lower off-take. Learned senior counsel also submitted that the delay in the payment of invoices/bills of supply raised by the Petitioner is not even a disputed position, and insofar as the averment regarding the limitation is concerned, there has been a specific acknowledgment of debt/dues by Respondent No.1 in its e-mails dated 27.2.2019 and 17.8.2021, and therefore, the claims of the Petitioner in the present case are not time barred.

2. Learned counsel for the Respondent NVVNL, while placing reliance on the Letter of Award dated 10.7.2018, submitted that the payment to the Petitioner was to be made only after the receipt from the Respondent, TSPCC and the Petitioner was, thus, duly aware that NVVN's liability of payment was contingent upon the receipt from TSPCC. Learned counsel also placed reliance on the Petitioner's letter dated 1.7.2022 to point out that the Petitioner, being aware of the above position, was therefore directly negotiating with Respondent, TSPCC, for the outstanding dues.

3. Learned counsel for the Respondent, TSPCC, submitted that the Petitioner has not sought any prayers against TSPCC. Learned counsel further submitted that the Petitioner has erroneously placed reliance on the PO No. 65/15-16 dated 5.3.2016, whereas the relevant PO concerning the Petitioner was PO No.64/15-16, placed on NVVN for supply of 78 MW (which was later modified to 66.3 MW) with the original source of power identified as MALCO Energy Ltd. Since during the supply tenure of the said PO, NVVN was not able to supply the power from MALCO Energy Ltd; it arranged the power of 50 MW from the Alternate Source, i.e., the Petitioner herein for the period from 8.4.2017 to 30.4.2017. Learned counsel further submitted that TSPCC has already settled all the payments with NVVN in respect of the said PO and hence, there are no further outstanding dues in respect of the said PO. Learned counsel added that, as per the Respondent, LPS claims of the Petitioner are also time barred.

4. In response, the learned senior counsel for the Petitioner clarified that the prayers had been made against the Respondent, NVVNL, since the Petitioner has the privity of contract only with NVVNL.

5. Considering the submissions of learned senior counsel and learned counsels for the parties, the Commission directed both sides to file their submissions within three weeks with a copy to the other side.

6. The matter remained part-heard and will be listed for hearing on **27.5.2025**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)