

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 378/MP/2023

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of disputes on the issue of wrongful deduction of compensation towards alleged non-supply and non-submission of contract performance bank guarantee.

Petitioner : Manikaran Power Limited

Respondents : MSEDCL and 2 others

Date of Hearing : **16.4.2026**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Ms. Swapna Seshadri, Advocate, MPL
Ms. Aishwarya Subramaniam, Advocate, MPL
Shri G. Sai Kumar, Senior Advocate, MSEDCL
Ms. Sneha Singh, Advocate, MSEDCL

Record of Proceedings

The matter was called out through a Hybrid mode.

2. During the hearing, the learned counsel for the Petitioner submitted that on the last occasion, the matter was heard on the issue of limitation and is now required to be heard on the merits.

3. The learned senior counsel for the Respondent, MSEDCL, submitted that the present Petition pertains to the adjudication of alleged wrongful deduction of compensation on account of non-supply or insufficient supply under a concluded contract. The learned senior counsel, while advancing arguments on merits, submitted as under:

- a) The Petitioner has already accepted compensation in terms of the contract, and therefore, cannot subsequently claim damages by resorting to market-based losses. The contractual provisions, particularly Clause 13.4, govern the extent of compensation and preclude any claim for damages beyond the agreed terms.
- b) In the presence of a concluded contract, the allocation of risks, including supply obligations and consequences of non-performance, is strictly governed by the contract. Reliance was placed on judicial precedents to contend that



compensation cannot be extended beyond contractual stipulations. The doctrine of *sub silentio* was also invoked to submit that issues not expressly argued or decided cannot be treated as binding precedents.

- c) The correspondence and Letters of Intent (LOIs) relied upon by the Petitioner do not conclusively establish unconditional acceptance or a binding obligation to supply in all circumstances, particularly in light of constraints such as coal shortages. Further, communications indicating “best efforts” to supply power cannot be construed as absolute commitments; therefore, the claim of a concluded contract leading to unlimited liability is misplaced.
- d) Accordingly, the claim for damages beyond the contractual framework is untenable in law and on the facts, and the scope of determination is limited to the identification and application of the relevant contractual provisions governing compensation.

4. In rebuttal, the learned counsel for the Petitioner mainly submitted as under:

- a) The Respondent, MSEDCL, had repeatedly sought adjournments on earlier occasions on the ground that the issues in the present Petition stood covered by the Commission’s order dated 2.6.2023, and that they intended to obtain a stay from the APTEL. However, despite the opportunities granted, no stay has been obtained, and therefore, no further deferment of the matter is warranted. It was further pointed out that the Respondent had earlier accepted the applicability of the said order and cannot now be permitted to take a contrary position.
- b) On merits, reference was made to various contemporaneous correspondences to demonstrate that the deductions effected by MSEDCL towards compensation were arbitrary and contrary to provisions of the tender documents. While the Petitioner had accepted limited liability for compensation in terms of Clause 23 of the tender document for deviation in scheduled energy, MSEDCL has imposed excessive and unjustified deductions, including amounts for non-submission of the Contract Performance Guarantee (CPG), which was never raised as a ground in the earlier communications. In terms of the Commission’s earlier order, MSEDCL was required to reconcile the deductions and refund the excess amounts, which have not been undertaken.
- c) The contractual arrangement between the parties stood concluded, as acknowledged in the Commission’s prior findings, and both parties are bound to act in terms thereof. The Respondent cannot introduce new grounds at this stage which were never part of its original case. Accordingly, the matter be decided on merits, as the issues are fully covered in its favour, and that appropriate directions be issued for refund of the excess deductions along with necessary adjustments.

5. The learned counsel for the Petitioner submitted that he will advance its argument in response to the submissions of the MSEDCL in the next date of hearing.



6. The Commission, after hearing the learned counsel for the parties at length, directed the Respondent, MSEDCL, to file its written note of submissions on or before **8.5.2026**, after serving a copy on the Petitioner, who may file its written note of submissions, thereafter, by **26.5.2026**.

7. The Petition shall be listed for hearing on **23.6.2026**.

By order of the Commission

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

