

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 230/MP/2018

Coram:

**Shri P. K.Pujari, Chairperson
Dr. M. K. Iyer, Member
Shri I.S. Jha, Member**

Date of Order: 16th April, 2019

In the matter of

Petition under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014 and for persistent default in payment of ERLDC charges stipulated under CERC (RLDC Fees & Charges and related matters) Regulations, 2015 by M/s Ind-Barath Energy (Utkal) Ltd.

And

In the matter of

Eastern Regional Load Despatch Centre
14, Golf Club Road, Tollygunge
Kolkatta-700003

.....Petitioner

Vs

1. Ind-Barath Energy (Utkal) Ltd
Registered Office: Plot No. 30-A
Road No. 1, Film Nagar, Jubilee Hills,
Hyderabad- 500096

2. Eastern Regional Power Committee
14, Golf Club Road, Tollygunge,
Kolkata- 700033

.....Respondents

3. Central Transmission Utility (CTU)
Power Grid Corporation of India Ltd
Saudamini, Plot no. 2, Sector- 29,
Gurgaon, Haryana- 122001

..... Proforma Respondent

Parties Present:

Shri Ashok Kr. Rajan, Advocate, ERLDC
Shri Manas Das, ERLDC



ORDER

This Petition has been filed by the Petitioner, Eastern Regional Load Despatch Centre (ERLDC) seeking the following reliefs:

“(i) Allow the petitioner to de-register Respondent No.1 as an ‘user’ of ERLDC in view of its persistent failure in making payment of ERLDC fees & charges and so as to enable the Petitioner (ERLDC) to recover the approved fees & charges from the remaining users.

(ii) Initiate appropriate action against the Respondent No.1 under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014 and for persistent default in payment of ERLDC charges stipulated under the CERC (RLDC Fees & charges and related matters) Regulations, 2015

(iii) Pass any such further order or orders as may be deemed just and proper in view of the facts and circumstances of this case.”

Background

2. The Petitioner has submitted that the Respondent No.1, Ind-Barath Energy (Utkal) Ltd (IBEUL) is a generating company with an installed capacity of 700 MW (2 x 350 MW) at Jharsuguda District, Odisha. The drawl of start-up power by IBEUL through Deviation Settlement Mechanism (DSM) commenced from 12.11.2014 for commissioning activities of its first unit of 350 MW as per the Central Electricity Regulatory Commission (Connectivity, Long Term Access, Medium Term Access in Inter-State Transmission System and related matters) Regulations, 2009 through LILO of one circuit of 400 kV Jhasuguda- Raigarh D/C Line. Subsequently, Unit-1 was first time synchronized with the grid on 11.9.2015 and infirm power was being injected into the gird from this date.

2. The Petitioner has submitted that the Commission vide its order dated 31.5.2016 in Petition No. 65/MP/2016 had allowed IBEUL to inject infirm power into the grid for commissioning tests including trial operation of Unit-I till 31.7.2016 or actual date of commercial operation, whichever is earlier. It was also



directed to complete the dedicated 400 kV IBEUL-Jharsuguda D/C transmission line upto Jharsuguda Pooling sub-station by 31.7.2016. The Commission also directed that IBEUL would not be allowed to inject infirm power beyond 31.7.2016 through the LILO of 400 kV Raigarh-Jharsuguda Circuit-I, if the dedicated line is not completed within such time.

3. The Petitioner has submitted that after successful completion of trial run operation of Unit-I, the said unit was declared under commercial operation (COD) with effect from 20.7.2016 with derated capacity of 339.6 MW. It was also decided in the 33rd TCC & ERPC meeting held on 24.6.2016 & 25.6.2016 that IBEUL will not be permitted to do any transaction-infirm or firm through the through the LILO of 400 kV Raigarh- Jharsuguda Circuit-I on and from 1.8.2016.

4. The Petitioner has submitted that the 400 kV dedicated transmission line-I & II from IBEUL to Jharsuguda Pooling station of Power grid was commissioned in the month of June, 2017 and May, 2017 respectively. The auxiliary power of IBEUL was being drawn through 400 kV IBEUL-Jharsuguda D/C line and the settlement was being done under DSM. Further, the tower location no.45 of 400 kV IBEUL-Jharsuguda D/C line collapsed on 29.4.2018 and IBEUL on 4.5.2018 informed that restoration work was in progress and that it will take about two months to restore the tower. However, even after a lapse of three months, the same has not been restored.

5. The Petitioner has submitted that the statement of charges for deviations including additional charges for deviation levied under the DSM Regulations, 2014 are prepared by the Eastern Regional Power Committee (ERPC) on weekly basis on



account of the data furnished by the Petitioner. The schedules of payment of charges for deviation are governed by Regulation 10 of the DSM Regulations, 2014. IBEUL has been making persistent default in the payment of the deviation charges thus violating Regulation 10 of the DSM Regulations, 2014. The Petitioner has submitted that the net outstanding dues (excluding interest amount) of IBEUL for the period from 12.11.2014 to 24.6.2018 into the regional DSM Pool account maintained by the Petitioner is Rs.1,12,50,429. Moreover, IBEUL has failed to open the Letter of Credit (LC) for default in payment of deviation charges violating Regulation 10(4) of the DSM Regulations.

6. The Petitioner has submitted that as per Regulation 10(3) (i) of the DSM Regulations, 2014, interest is being calculated on delayed payment/non-payment of deviation charges by IBEUL. As per Regulation 9(3)(c) of the DSM Regulations, 2014 any payment received in Deviation Pool account fund shall be adjusted towards normal interest and then charges towards deviation and additional deviation. IBEUL is liable to pay normal interest of Rs. 1167826/- calculated upto 30.6.2018. Accordingly, the summary of DSM bills raised upto 24.6.2018 with normal interest computed till 30.6.2018 is as under:

<i>(amount in Rs)</i>						
Description of charges	Period	Amount Payable	Amount Paid	Amount Receivable	Amount Received	Outstanding amount as on 30/6/2018
Deviation charges	12/11/2014 to 24/6/2014	51260600	36546088	76677091	73213008	1,12,50,429
Normal interest charges	calculated till 30/6/2018					11,67,826
Total						1,24,18,255

7. The Petitioner has submitted that the non-payment of deviation charges affects the grid operations in the form of increase in grid discipline and this is a



matter of concern to the system operator. Also, after implementation of the CERC (Ancillary Services Operations) Regulations from 12.4.2016, payment to RRAS providers has to be done from the pool balance of DSM account, but the non-payment by IBEUL creates a shortage of balance in the pool fund affecting disbursement to RRAS providers.

8. The Petitioner has submitted that it is sending the quarterly reconciliation statement of deviation account to each of the DSM Pool member, but IBEUL has not reconciled the DSM account since the last three years. In terms of clause 6.4(21) of the Grid Code, 2010 and its amendments thereof, for requirement of energy meter data validation at ERLDC, the meter data of IBEUL end is required to be sent by IBEUL. However, IBEUL has stopped sending the meter data to ERLDC since April, 2017 which is affecting the validation at ERLDC.

9. The Petitioner has submitted that the matter of non-submission of meter data by IBEUL was also discussed in the 145th OCC meeting and OCC forum decided to convene a separate meeting with IBEUL to resolve the issues. Accordingly, a special meeting was convened at ERPC Kolkata on 1.6.2018 wherein IBEUL representative did not attend the meeting. The 146th OCC forum noted that IBEUL was not adhering to the decisions of any forum of ERPC and not clearing the outstanding dues of various pool accounts of Eastern Region. Further, OCC forum recommended that suitable actions including de-registering IBEUL as Regional entity might be explored.

10. The Petitioner has submitted that IBEUL has also been defaulting in the payment of fees & charges of ERLDC in terms of Regulation 31 of the CERC (RLDC



fees & charges related matters) Regulations, 2015 since August, 2017 to till date and the non-payment of the same to ERLDC is adversely affecting the financial position of the Petitioner. The summary of the statement of bills raised, payments made, surcharge accrued towards ERLDC fees & charges upto June, 2018 is as under:

(Amount in ₹)

Bill Month	Bill Date	Bill Amount	Amount Paid	Amount Paid Date	Default in no of days	Outstanding	Interest Surcharge
Apr-17	1-May-17	2,38,686	2,38,686	09-Nov-17	192	-	15,753
May-17	1-Jun-17	2,34,934	2,34,934	09-Nov-17	161	-	11,864
Jun-17	3-Jul-17	2,34,934	2,34,934	09-Nov-17	129	-	8,105
Jul-17	1-Aug-17	2,34,934	2,34,934	25-Jan-18	177	-	13,744
Aug-17	1-Sep-17	2,34,934	30,132	25-Jan-18	146	2,04,802	26,077
Sep-17	3-Oct-17	2,35,075	-	-	-	2,35,075	24,683
Oct-17	1-Nov-17	2,35,075	-	-	-	2,35,075	21,274
Nov-17	1-Dec-17	2,33,649	-	-	-	2,33,649	17,640
Dec-17	1-Jan-18	2,33,649	-	-	-	2,33,649	14,019
Jan-18	1-Feb-18	2,35,030	-	-	-	2,35,030	10,459
Feb-18	2-Mar-18	2,34,397	-	-	-	2,34,397	7,032
Mar-18	2-Apr-18	2,34,397	-	-	-	2,34,397	3,399
Apr-18	1-May-18	2,53,110	-	-	-	2,53,110	
May-18	1-Jun-18	2,47,007	-	-	-	2,47,007	
Jun-18	2-Jul-18	2,45,716	-	-	-	2,45,716	
Total						25,91,907	1,74,049

- Interest rate surcharge calculated @ 0.05% per day.
- Interest calculated after 60 days from the bill date.

11. The Petitioner has submitted that CTU vide its letter dated 18.6.2018 had given termination notice period of Thirty (30) days to IBEUL under Clause 16.4.4 for default under clause 16.2.1 of TSA on non-compliance of Regulation Clause 3.6 of Billing, Collection and Disbursement procedure approved by the Commission to IBEUL, for non-opening of Letter of credit. CTU has intimated that IBEUL shall cease to be a party to the Transmission Service Agreement (TSA) and shall cease to be a DIC and thereafter shall be ineligible to inject power into ISTS through any form of access including, STOA, MTOA & LTA as directed by the Commission vide its order dated 8.3.2018 in Petition No. 229/RC/2015. The Petitioner has also



submitted that power is not being availed by IBEUL from the grid since 29.4.2018 due to tower collapse of 400 KV IBEUL-Jharsuguda D/C line.

12. The Petitioner has submitted that it has through various correspondences dated 14.12.2017, 4.1.2018, 4.5.2018 and 26.6.2018 requested IBEUL to clear the outstanding dues of the DSM charges and has also taken up in the various Commercial Committee Meetings (CCM) and the TCC/ERPC meetings of ERPC. ERLDC vide its letters dated 27.4.2016, 22.8.2017 and 26.4.2018 had requested IBEUL to open the requisite LC for revised amount as per the Regulation 10(4) of the DSM Regulations, 2014. Despite repeated reminders & intimations from the Petitioner, IBEUL never opened LC for the default in DSM payments under Regulation 10(4) of DSM Regulations 2014 till date. The petitioner has also been submitting the status report on payment of DSM charges by Eastern Regional DSM Pool Members to the Commission on monthly basis.

13. The Petitioner has submitted that IBEUL never approached ERLDC for Short Term Open Access transaction and also the Commission had disallowed the transaction of infirm/firm power through LILO configuration. Thus, disallowing of any Short Term Open Access transaction to IBEUL in terms of Regulation 25A of the CERC (Open Access in inter-state Transmission) (Second Amendment) Regulations, 2013 does not arise. The Petitioner has submitted that it has through various correspondences dated 17.8.2017, 6.11.2017, 7.5.2018 and 21.6.2018 requested IBEUL to clear the outstanding dues of ERLDC Fees & Charges monthly bill and the same has not been paid by IBEUL.

In the above background, the present Petition has been filed by the Petitioner with the prayers as in para 1 above.



14. The Petition was admitted on 13.12.2018 and notice was ordered on the respondents with directions to complete pleadings in the Petition. None of the respondents have filed their replies/response in the matter.

15. The Petitioner during the hearing of the Petition on 27.2.2019 submitted that the Commission may permit the Petitioner to de-register IBEUL as a 'user' of ERLDC due to its failure in making payment of ERLDC fees & charges. None appeared on behalf of the respondents. The Commission while pointing out that the Petitioner was at liberty to file its claims against IBEUL in the proceedings pending before NCLT also observed that a view will be taken on the prayer of the Petitioner for de-registration of IBEUL. Accordingly, order in the Petition was reserved.

Analysis and Decision

16. We have considered the submissions of the Petitioner. The Petitioner has prayed for initiation of action against IBEUL under Section 142 of the Electricity Act, 2003 for violation of Regulation 10 of the DSM Regulations, 2014 for failure of IBEUL to clear outstanding dues towards DSM charges and for default in the payment of ERLDC fees & charges as stipulated under the CERC (RLDC Fees & Charges and related matters) Regulations 2015, as amended from time to time.

17. It is noticed that IBEUL is presently subject to the proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). Pursuant to the order of the National Company Law Tribunal, Hyderabad Bench dated 29.8.2018, the Insolvency Resolution Professional (IRP) has been appointed. Further, NCLT by the said order



has imposed a moratorium on institution or combination of suits or proceedings under Section 14 of the IBC. Section 14 of the IBC is extracted as under:-

"14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

18. Hence, as per the Section 14 of the IBC, all proceedings before any Court or Tribunal, Arbitral Panel or any authority are prohibited during the period of moratorium under Section 14 of the IBC. Since moratorium has been imposed under Section 14 of the IBC on the basis of the order dated 29.8.2018 of NCLT, Hyderabad Bench, the Commission cannot entertain the prayer of the Petitioner for de-registration of IBEUL as 'user' of ERLDC or for initiation of proceedings



under Section 142 of the Electricity Act, 2003 against IBEUL, thereby affecting the legal/beneficial interests of IBEUL during the pendency of IRP.

19. Under Section 60 (5) of the IBC, a corporate person can approach NCLT for appropriate directions which are extracted under:

“60 (5): Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of–

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

20. In view of the above provisions, the Petitioner is at liberty to approach NCLT for appropriate directions in accordance with law.

21. Petition No. 230/MP/2018 is disposed of as above.

Sd/-
(I.S.Jha)
Member

Sd/-
(Dr. M.K. Iyer)
Member

Sd/-
(P.K.Pujari)
Chairperson

