

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 173/MP/2019 along with IA No.67/IA/2020

Subject : Petition under Section 79(1)(b), Section 79(1)(f) and Section 79(1)(k) of the Electricity Act, 2003 read with Articles 8.3.5, 8.4.3 and 8.4.11 of the PPA dated 23.8.2013 and the amended PPA dated 10.12.2013 executed between the Petitioner BALCO and the Respondent TANGEDCO seeking payment of outstanding amount on account of (i) late payment surcharge, (ii) additional interest and for furnishing of Stand by Letter of Credit as payment security mechanism.

Date of Hearing : 28.6.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Bharat Aluminium Company Limited (BALCO)

Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Anr.

Parties Present : Shri Hemant Singh, Advocate, BALCO
Shri Lakshyjit Singh Bagdwal, Advocate, BALCO
Ms. Alchi Thapliyal, Advocate, BALCO
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking directions upon the Respondent No.1 TANGEDCO for releasing the outstanding payment accrued in favour of the Petitioner on account of non-payment of Late Payment Surcharge ('LPS') along with applicable interest. Learned counsel submitted that out of the total outstanding LPS of approximately Rs. 164 crore as on April, 2021, the Respondent has paid Rs. 84 crore after the Petitioner having agreed to waive the balance amount. However, for the subsequent period, TANGEDCO has once again become liable to pay approximately Rs.15 crore towards LPS. Learned counsel added that as such TANGEDCO has not disputed outstanding amount but has failed to make the payment by citing the financial difficulties/crunch faced by it.

3. Learned counsel for the Respondent, TANGEDCO submitted that the present Petition is pertaining with the supplementary bills raised by the Petitioner towards LPS for the period from October, 2015 to June, 2018 only and the Respondent has already paid the LPS for the aforesaid period to the Petitioner. In fact, after filing of reply, the Respondent has paid LPS dues to the Petitioner upto January, 2021. Learned counsel further submitted that any subsequent dues cannot be covered under the present

Petition. Learned counsel added that the Petitioner cannot keep the present Petition alive for entire term of the Power Purchase Agreement. Learned counsel requested to permit the Respondent to file its affidavit clarifying the position in respect of the subsequent payments made by the Respondent.

4. In response, learned counsel for the Petitioner referred to the prayer (c) and submitted that in the present case, the Petitioner has also prayed for direction to the Respondent to make payment of LPS along with applicable interest in the event of default of making such payment by the Respondent in future. Thus, the argument of TANGEDCO that for the outstanding LPS of every subsequent month(s), the Petitioner ought to file a separate Petition, cannot sustain.

5. Learned counsel for the Respondent TANGEDCO submitted that such prayer for specific performance of contract is not maintainable in law and in this regard, reliance was placed on the Section 14(b) of the Specific Relief Act, 1963. Learned counsel submitted that the Respondent is also moving for rescheduling of its dues/arrears as per the Electricity (Late Payment Surcharge and related matters) Rules, 2022.

6. After hearing the learned counsel for the parties, the Commission directed the Respondent to file its additional affidavit within two weeks after serving copy of the same to the Petitioner, who may file its response thereon, if any, within two weeks thereafter.

7. Subject to the above, the Commission reserved the matter for order.

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