

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 234/MP/2022

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 read with the Pilot Power Supply (PPSA) dated 27.10.2018 executed between the Petitioner and the Respondent No.1/TANGEDCO for supply of 550 MW of power from the power plant of Respondent No.2/IL&FS Tamil Nadu Power Company Limited, seeking (i) payment of the outstanding amount on account of monthly supply bills along with late payment surcharge; (ii) quashing of the termination notice dated 29.3.2022 and (iii) payment of interest on Debt and O & M expenses as determined by this Commission.

Date of Hearing : 3.11.2022

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

Petitioner : PTC India Limited (PTCIL)

Respondents : Tamil Nadu Generation and Distribution Corp. Ltd.
(TANGEDCO) and Anr.

Parties Present : Shri Ravi Kishore, Advocate, PTCIL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking direction upon the Respondent No.1, TANGEDCO for (i) payment of outstanding amount on account of monthly supply bills along with late payment surcharge, (ii) quashing of termination notice dated 29.3.2022, and (iii) payment of interest on Debt and O&M expenses as may be determined by the Commission. Learned counsel mainly submitted as under:

(a) The Petitioner has entered into a Pilot Agreement for Procurement of Power (PAPP) with Respondent No.2 dated 26.10.2018 for generation and supply of 550 MW of power from the generating station of Respondent No.2 to Respondent No.1, TANGEDCO in terms of Pilot Power Supply Agreement (PPSA) dated 27.10.2018 entered into on back-to-back basis for supply period from 1.4.2019 to 31.3.2022 (excluding the months of June, July and August during the above period).

(b) Since the commencement of supply w.e.f. 1.4.2019, TANGEDCO had failed to make timely payment in terms of PPAS and the payment against the invoices for the months of May, 2019 to January, 2021 were received only after considerable delay. However, thereafter, TANGEDCO completely stopped making payment and consequently, no payment has been received in respect of the invoices for the months of February, 2021 to September, 2021. The

outstanding amount for the said period works out to Rs. 456.29 crore towards principal amount and Rs. 147.53 crore towards late payment surcharge (calculated up to 16.8.2022).

(c) In view of the substantial outstanding dues, the Respondent No.2/the Petitioner invoked the Article 12.2 of PAPP (Article 12.3 of PPSA) and stopped the supply of power w.e.f. 4.10.2021. As per the said Article, the Respondent No.2 has the right to sell the whole or part of the contracted capacity to any buyer if it is unable to recover its tariff through the Letter of Credit and if the tariff or part thereof remains unpaid for a period of one month from the payment due date.

(d) TANGEDCO has failed to open the Letter of Credit in favour of the Petitioner as per the provisions of the PPSA. Although, TANGEDCO had opened the LC but the same was defective/discrepant. When the Petitioner sought to recover the outstanding by way of invoking LC, the Petitioner, on 9.3.2022, received an email from the bankers of TANGEDCO stating that they are unable to process the payment under LC as the accepted bill of exchange from TANGEDCO was not attached with LC.

(e) Without considering that non-supply under PAPP/PPAS had been triggered on account of non-payment of outstanding dues by TANGEDCO itself, on 29.3.2022 i.e. just two days prior to the expiry of PPAS, TANGEDCO issued the purported termination notice and demanded payment of Rs. 428.15 crore from the Petitioner in this regard.

(f) Pursuant to notification of the Electricity (Late Payment Surcharged and Related Matters) Rules, 2022 on 3.6.2022, TANGEDCO initially vide its letter dated 27.6.2022 communicated to the Petitioner that it intended to liquidate the outstanding amount of Rs. 316.68 crore in 48 equal monthly installments. However, surprisingly, vide letter dated 30.6.2022, TANGEDCO withdrew the earlier letter dated 27.6.2022 and made an alleged demand of Rs. 111.46 crore from the Petitioner after adjusting the amount of Rs. 428.15 crore towards purported termination payment.

(g) In view of the unequivocal admission of the outstanding dues by TANGEDCO in its letter dated 27.6.2022 (which was issued only after the termination notice dated 29.3.2022), it may be directed to make the payment of at least the admitted principal amount forthwith.

2. Learned counsel for the Respondent No.1, TANGEDCO accepted the notice and sought time to file reply to the Petition. Learned counsel submitted that the PPSA was terminated on account of non-supply of power by the Petitioner for period of more than six months and which also entitled TANGEDCO to the termination payment under the PPSA. Learned counsel submitted that since the termination payment exceeded the outstanding dues, it is TANGEDCO who has become entitled to receive the payment from the Petitioner. Learned counsel added that the letters raising the issue of non-honoring of LC are of March, 2022 only. She submitted that the Petitioner has not provided the details regarding sale of power to third parties upon the alleged invocation of Article 12.2/12.3 of the PAPP/PPSA w.e.f. 4.10.2021 and the revenue earned thereof. Learned counsel further added that various communications were exchanged between the parties wherein TANGEDCO had disputed the suspension of scheduling by the Petitioner/Respondent No.2 and TANGEDCO may be permitted to put them on record along with its reply. Learned

counsel, accordingly, urged the Commission not to pass any direction of making payment at this stage without considering the reply of TANGEDCO.

3. After hearing the learned counsel for the parties, the Commission directed as under:

(a) Admit. Issue notice to the Respondents.

(b) The Petitioner to serve copy of the Petition on the Respondents and Respondents to file their reply to the Petition, if any, within three weeks after serving copy of the same to the Petitioner, who may file its rejoinder, on or before three weeks thereafter.

(c) Parties to comply with the above directions within specified timeline and no extension of time shall be granted.

4. The Petition shall be listed for hearing on 19.1.2023.

By order of the Commission

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