

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 25/MP/2020

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 10 of the Power Purchase Agreements dated 17.3.2010 and 21.3.2013 executed between GMR Warora Energy Limited and the Distribution Companies in the States of Maharashtra and Dadra and Nagar Haveli pursuant to liberty granted in Order dated 16.5.2019 in Petition No. 284/MP/2018.

Date of Hearing : 24.3.2022

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

Petitioner : GMR Warora Energy Limited (GWEL)

Respondents : Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and Anr.

Parties Present : Shri Vishrov Mukerjee, Advocate, GWEL
Shri Janmali Manikala, Advocate, GWEL
Shri Rohit Venkat, Advocate, GWEL
Shri Yashaswi Kant, Advocate, GWEL
Ms. Priyanka Vyas, Advocate, GWEL
Shri Anand K Ganesan, Advocate, DNHPDCL
Shri Ashwin Ramanathan, Advocate, DNHPDCL
Shri Anup Jain, Advocate, MSEDCL
Shri Akshay Goel, Advocate, MSEDCL
Shri Dinesh H Agarwal, MSEDCL

Record of Proceedings

Case was called out for virtual hearing.

2. At the outset, learned counsel for the Respondent, DNHPDCL submitted that the Petitioner has filed an additional affidavit containing the various data running approximately 2000 pages on 7.3.2022 and thus, the Respondent may be permitted some time to verify such data and to file the response, if necessary.

3. Learned counsel for the Petitioner objected to the request of additional time sought by the learned counsel for the Respondent and submitted mainly the following:

(a) Instant Petition has been filed seeking compensation for As-is-Where-Is-Basis ('AIWIB') coal and washery coal procured by the Petitioner to meet the shortfall in the linkage coal in terms of the liberty granted by the Commission in order dated 16.5.2019 in Petition No. 284/MP/2018. In the said order, the

Commission has already approved AIWIB and washery coal as part of alternate coal.

(b) However, the Respondents, on the pretext of the various issues which have already been decided by the Commission, are depriving the Petitioner from its legitimate claims.

(c) Total outstanding amount payable by the Respondents, MSEDCL and DNHPDCL towards AIWIB and washery coal is approximately Rs. 94 crore and Rs. 60 crore respectively.

(d) Hon'ble Supreme Court has also taken a view that during the pendency of proceedings, in which issue involved has already been decided once, 50% of the outstanding claimed amount should be paid. In this regard, reliance was placed on the order dated 14.2.2022 in Civil Appeal No. 1805 of 2021. In the said matter, MSEDCL had raised various objections including discrepancy in GCV, quantum of coal and verification of claims, etc. as raised in the present case. However, Hon'ble Supreme Court directed MSEDCL to pay 50% of outstanding claimed amount.

(e) In the above circumstances, the Commission may proceed with the matter. However, in case, the Respondents are to be permitted the additional time for verification of details/data, then they may be directed to pay at least 50% of the outstanding claimed amount forthwith.

4. Learned counsel for the Respondent, DNHPDCL opposed the request of the Petitioner for interim payment at this stage. Learned counsel submitted that despite the direction of the Commission in order dated 16.5.2019 in Petition No. 284/MP/2018 to approach with all the information/particular to determine the impact/compensation of AIWIB and washery coal, the Petitioner filed the present Petition bereft of requisite data/details. The Petitioner was also asked to furnish the requisite data vide Record of Proceedings for the hearing dated 27.8.2021 and the Respondent had thereafter pointed out the deficiencies / discrepancies in the data/details provided vide its affidavit dated 23.9.2021. It is in response to the Respondent's affidavit filed in September, 2021, the Petitioner has now filed additional affidavit along with further data/details belatedly on 7th March, 2022. Thus, delay in the matter cannot be attributed to the Respondent. Learned counsel further added that in event the Petitioner insists on hearing of the matter, the additional details furnished by the Petitioner on 7.3.2022 may not be considered. Learned counsel further submitted that the Respondent has already started examining the additional data furnished by the Petitioner and may be permitted two weeks' time to complete the said exercise and file its response thereon.

5. Learned counsel for the Respondent, MSEDCL also opposed to the Petitioner's request for interim payment in absence of the Respondent's arguing counsel. Learned counsel submitted that the Respondent vide its letter dated 21.3.2022 had informed the Petitioner well in advance that the additional details furnished by the Petitioner on 7.3.2022 will require some time for verification and also about the non-availability of the Respondent's arguing counsel for today's hearing. Learned counsel for the Respondent, MSEDCL requested for four weeks' time to examine the data/details furnished by the Petitioner and to file its response, if any.

6. In response, learned counsel for the petitioner submitted that the details/data as required in terms of the Record of Proceedings for hearing dated 27.8.2021 had been submitted to the Respondents on 4.9.2021. Learned counsel submitted that all the requisite details including details under the Form 15 have already been submitted to the Respondents along with its monthly bills. Accordingly, the Respondents ought not to be permitted to hold up the amounts due to the Petitioner and be directed to release the 50% of the outstanding amount forthwith.

7. After hearing the learned counsel for the parties and considering that the Petitioner has filed its response along with the voluminous details on 7.3.2022, the Commission granted two weeks' time to the Respondents to examine such details and to file their comments, if any, with copy to the Petitioner, who may file its clarification/justification to the comments made by the Respondents, if any, within two weeks' thereafter.

8. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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