

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.264/MP/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 for execution of Order dated 15.8.2020 passed in Petition No. 158/MP/2019; and initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the Order dated 15.8.2020 passed by the Commission in Petition No. 158/MP/2019.

Date of Hearing : 10.1.2023

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

Petitioner : Adhunik Power and Natural Resources Limited (APNRL)

Respondents : PTC India Limited (PTCIL) and Anr.

Parties Present : Shri Deepak Khurana, Advocate, APNRL
Shri Ashwini Kumar Tak, Advocate, APNRL
Shri Ravi Kishore, Advocate, PTC
Ms. Anusha Nagarajan, Advocate, TANGEDCO

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed seeking execution of the Commission's order dated 15.8.2020 in Petition No. 158/MP/2019 ad initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 (Act) and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the said order and direction to the Respondents to forthwith comply with the said order. Learned counsel mainly submitted the following:

- (a) Vide order dated 15.8.2020, the Commission had allowed the Petition No. 158/MP/2019 filed by the Petitioner seeking a declaration that the deduction made by the Respondents towards the capacity charges from the bills raised by the Petitioner for the months of December, 2018 to February, 2019 were illegal and wrongful and accordingly, the Petitioner was held entitled for refund of the capacity charges including the penalty withheld/deducted by the Respondents along with the late payment surcharge.
- (b) While the aforesaid order has been challenged by PTCIL before the APTEL in Appeal No. 168 of 2020, there is no stay on the said order. It is well settled principle of law that mere pendency of appeal does not operate as stay or suspension of order appealed against. Notably, IA No. 1227 of 2020 filed by PTCIL seeking stay on the above order was disposed of by the APTEL as PTCIL itself did not press the said application.

(c) The Petitioner also wrote to the Respondents on numerous occasions requesting and urging the release of the amount due to the Petitioner in terms of the aforesaid order. However, no amount has been released by the Respondents till date.

(d) The dues of the Petitioner as per the order dated 15.8.2020 amount to Rs. 33.65 crore (principal amount) which along with late payment surcharge thereon, amount to Rs. 51.73 crore as on 31.8.2022. The claim of the Petitioner to the extent of Rs.36.62 crore was also noted in the order dated 15.8.2020 and the Respondents had not raised any objection to the said claim amount.

(e) In the above circumstances, the Petitioner has also prayed for an interim direction to the Respondents to forthwith pay at least 90% of the total amount due as on 31.8.2022.

2. Learned counsel for the Respondent No.1, PTCIL submitted that after issuance of order dated 15.8.2020, the Petitioner was in direct contact with TANGEDCO for the release of the payment under the said order. Learned counsel further submitted that in one of the correspondences exchanged between the parties, the Petitioner also acknowledged that it will claim the amount from PTCIL only after the receipt of such amount by PTCIL from TANGEDCO.

3. Learned counsel for TANGEDCO submitted that the amount claimed by PTCIL from TANGEDCO, under the said order, was lesser than amount claimed by the Petitioner from PTCIL. Learned counsel submitted that, as per TANGEDCO, the PTCIL had claimed Rs. 42.28 crore from TANGEDCO and out of the said amount, Rs. 29.52 crore has already been paid to PTCIL. Learned counsel further submitted that the balance amount of Rs. 12.75 crore was under dispute and after further reconciliations, TANGEDCO also admitted an amount of Rs. 6.04 crore, which has been included in its liquidation plan under the LPS Rules. Learned counsel also added that the said amount was subject to the adjustment on account of the third party sale by the Petitioner as admitted by the Petitioner itself in one of its correspondence.

4. In response, the learned counsel for PTCIL sought liberty to seek the necessary instruction on the above aspect and fairly submitted that in case the amount, as stated, has received by PTCIL from TANGEDCO, PTCIL will make payment of such amount to the Petitioner.

5. After hearing the learned counsel for the parties, the Commission ordered as under:

(a) Admit.

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

(c) Respondent, PTCIL shall confirm the receipt of payment from TANGEDCO, as noted above, within a week and in the event, such payments have been received, PTCIL shall make payment of such amount to the Petitioner within a week thereafter.

(d) In the event, no amount due under the order dated 15.8.2020 has been paid by the Respondent, TANGEDCO as submitted by the Petitioner, the

Respondents shall make the payment of Rs. 29.52 crore to the Petitioner within two weeks from the issuance of the ROP.

(e) The Respondents to comply with the above directions within the specified timelines failing which appropriate action will be initiated against the officers of the Respondents.

6. The Petition shall be listed for hearing on 21.3.2023.

By order of the Commission

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