

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 131/MP/2019

Coram:

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

Date of Order: 15th December, 2023

In the matter of

Petition invoking Section 79(1)(e), 79(1)(i) and Section 79(1)(k) read with Sections 129 & 130 of the Electricity Act, 2003 read with Regulation 7, 8 and 13 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 seeking appropriate directions against Global Energy Private Ltd.

And In the matter of

**BSES Yamuna Power Ltd (BYPL),
Shakti Kiran Building Karkardooma,
Delhi – 110092**

.... Petitioner

Vrs.

**Global Energy Pvt. Ltd.,
6th Floor,
Le Meridian Commercial Tower,
Raisina Road,
New Delhi, Delhi 110001**

... Respondent

Following was present:

Shri Aditya Gupta, Advocate, BYPL
Ms. Mahima Singh, Advocate, RP for GEPL
Ms. Kheyali Singh, Advocate, RP for GEPL
Shri K.S.Rana, BYPL



ORDER

The petitioner, BSES Yamuna Power Ltd (BYPL), has filed the present petition under Section 79(1)(e), 79(1)(i), and Section 79(1)(k) in conjunction with Sections 129 and 130 of the Electricity Act, 2003 ("the Act"), as well as Regulations 7, 8, and 13 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 ('Trading License Regulations') seeking appropriate directions against Global Energy Private Ltd., formerly Global Energy Limited, ('GEPL') to make payments towards the outstanding dues of the power supplied by the Petitioner to GEPL, in terms of the Letter of Intent dated 16.11.2012 ('LOI') issued by the Petitioner herein, for sale of 80 MW of power at Rs. 3.32/unit for a period from 20.11.2012 to 30.03.2013 on the terms and conditions mentioned therein, which was accepted by the Respondent, GEPL by its email dated 12.12.2012. The Petitioner has made the following prayers:

“(a) Admit the Present Petition; and

(b) Direct Global Energy Private Ltd. to perform its obligations under Regulation 7 (h) of the Trading License Regulations and pay the outstanding dues of Petitioner in terms of the LOI amounting to Rs. 18.98 crores including LPSC amount of Rs. 7.53 crores; and/or

(c) Pass any other order which this Hon'ble Commission may deem fit.”

Brief background:

2. The Petitioner, BYPL (a joint venture between R-Infra and Delhi Power Company Limited ('DPCL'), with 51% of its shareholding and management control with R-Infra) is operating as a distribution licensee and is supplying electricity in Central and East Circles of the NCT of Delhi in accordance with the Distribution and



Retail Supply Licence ('License') granted to it by the Delhi Electricity Regulatory Commission ('DERC') under Section 20 of the Delhi Electricity Reform Act, 2000 ('Reforms Act'). GEPL (a category-I licensee for inter-state trading in electricity) vide its communication dated 15.11.2012 to the Petitioner expressed its interest to offer for purchase of power during the period from 20.11.2012 to 31.03.2013 for a quantum of 80MW on firm basis. The Petitioner vide its Letter of Intent (LOI) dated 16.11.2012 accepted the offer dated 15.11.2012 for Sale of Power to GEPL for period from 20.11.2012 to 31.03.2013 subject to prevailing terms and conditions.

3. On 12.12.2012, GEPL accepted the LOI issued by the Petitioner and confirmed that it has received confirmation from the buyer for purchase of power of 50 MW off-peak power during period from 13.12.2012 to 12.03.2013. Accordingly, GEPL requested BYPL to schedule power during 0:00 hrs. to 17:00 hrs. and 23:00 hrs. to 24:00 hrs. for the period 13.12.2012 to 12.03.2013 to GEPL's buyer, Meghalaya Energy Corporation Ltd. ("MeCL"). The Petitioner had scheduled power to GEPL as per the terms and conditions agreed between the parties, as contained in the Lol, and Petitioner was regularly raising bills for the same. However, GEPL was irregular in making payments for the bills raised and was making lumpsum payments towards the entire outstanding. The Petitioner vide its letter dated 9.1.2013 informed GEPL that it has not made payment for bills pertaining to the power supplied during the period December, 2012 and January, 2013. The Petitioner was repeatedly issuing reminders to GEPL to make the payments of the outstanding amounts along with surcharge amount. There has been consistent delay in payment by GEPL and subsequently, GEPL has not paid Rs. 7.81 Crores to the Petitioner. The total amount due including LPSC as per arrangement is Rs. 18.98 crores. As



such GEPL has failed to adhere to the requirement of Regulation 7(h) of the Trading Regulations and the terms and conditions of the LOI. Aggrieved by the non-payment of the legitimate dues by the Respondent, GEPL, the Petitioner was constrained to file the present petition.

Submissions of the Petitioner:

4. In support of the above prayers, the Petitioner has mainly submitted as under:
 - (a) On 28.11.2008, this Commission, in exercise of its powers conferred under Section 14 of the Electricity Act, 2003, granted license to GEPL as a category 'A' trader to trade in electricity in the whole of India subject to the terms and conditions of the license and the Electricity Act, its rules and Regulations framed thereunder.
 - (b) On 01.06.2011, by an amendment the license of GEPL was changed from category 'A' license for inter-state trading in electricity to category 'I' license under the CERC (Procedure, Terms and Conditions for grant of Trading license and other related matters) Regulations, 2004 in terms of the order dated 01.06.2011 of this Hon'ble Commission in Petition No. 130/MP/2011.
 - (c) On 15.11.2012, GEPL addressed a communication to the Petitioner wherein it expressed its interest for purchase of power on firm basis during the period from 20.11.2012 to 31.03.2013 for a quantum of 80MW on firm basis.
 - (d) On 16.11.2012, the Petitioner accepted the offer dated 15.11.2012 by GEPL and issued a Letter of Intent ('LOI') for Sale of Power to GEPL for the

period from 20.11.2012 to 31.03.2013 on the terms and conditions mentioned therein.

(e) On 12.12.2012, GEPL accepted the LOI issued by the Petitioner and confirmed that it has received confirmation from the buyer for purchase of power of 50 MW off-peak power during period from 13.12.2012 to 12.03.2013. Accordingly, GEPL requested BYPL to schedule power during 0:00 hrs. to 17:00 hrs. and 23:00 hrs. to 24:00 hrs. for the period from 13.12.2012 to 12.03.2013 to GEPL's buyer, Meghalaya Energy Corporation Ltd. ("MeCL"). On request of GEPL, BYPL scheduled 50MW during 0:00 hrs. to 17:00 hrs. and 23:00 hrs to 24:00 hrs. for the period 13.12.2012 to 12.03.2013 to GEPL's buyer MeCL, for which the bills were raised.

(f) The Petitioner had scheduled power to GEPL as per the terms and conditions agreed between the parties, as contained in the Lol, and Petitioner was regularly raising bills for the same. However, GEPL was irregular in making payments for the bills raised and was making lumpsum payments towards the entire outstanding. As such BYPL was maintaining a running account with GEPL.

(g) On 09.01.2013, the Petitioner by its letter informed GEPL that it has not made payment for bills pertaining to the power supplied during the period December 2012 and January 2013. GEPL was requested to make a payment of Rs. 5,35,03,769/- with applicable surcharge within two days, failing which Petitioner shall be constrained to regulate the power supply. On 04.02.2013, Petitioner issued another reminder to GEPL towards non-payment of Rs. 6.5

crores along with surcharge amount of Rs. 10,08,899/- for the power supplied.

(h) Since December, 2012 GEPL was irregular in making payments towards weekly energy bills raised by BYPL/Petitioner. The Petitioner was repeatedly issuing reminders to GEPL to make the payments of the outstanding amounts along with surcharge amount.

(i) GEPL never refuted the claims of the Petitioner and had accepted the outstanding amounts. The Petitioner provided the power till 15.03.2013, in good faith.

(j) On 17.07.2013, the Petitioner issued another letter and informed GEPL that during the conference call between the parties, GEPL assured the Petitioner that the outstanding amounts shall be cleared by July 2013 in weekly payments. However, GEPL had released only an amount of Rs. 1.94 Crores and failed to make the entire outstanding payments.

(k) On 30.08.2013 and 04.10.2013, the Petitioner again by its letter informed GEPL, that even after assurances of making the payments, GEPL had failed to make the payment of the outstanding amounts. The last payment received from GEPL was in October 2013.

(l) On 03.03.2014, the Petitioner was compelled to issue another reminder letter to GEPL for payment of Rs. 12.42 crores including an LPSC of Rs. 2.52 crores. The same was also not responded by GEPL.

(m) On 13.01.2015, the Petitioner was constrained to issue a Legal Notice for recovery of the outstanding amounts. It was stated that against the total

energy bills of approx. Rs. 26,33,98,225/-, GEPL has made a payment of only Rs. 16.43 crores.

(n) On 20.01.2015, GEPL responded to the legal notice by the Petitioner and for the first time denied the legitimate claims of the Petitioner. However, it is submitted that GEPL did not even provide one single reason for denying the claims of the Petitioner.

(o) On 01.06.2017, GEPL sent a Notice bearing subject title "Notice of Invocation of Arbitration of Disputes in terms of Clause 11 of the Acceptance letter dated 16.11.2012, issued by BSES Yamuna power Limited (hereinafter referred to as 'BYPL'" (hereinafter referred to as "Arbitration Notice").

(p) The Petitioner has sent almost 34 reminders to GEPL to make the payments, however on one pretext or the other, GEPL has not made the payments even after admitting the amounts. GEPL has not replied to any communication or provided any reason for the dispute of the claims and it has made no attempt to make any payment to the Petitioner towards outstanding of Rs. 18.84 crores including LPSC of Rs. 7.39 crores (as of 02.04.2019).

(q) The present petition is within the jurisdiction of the Commission under Sections 79(1) (e), (j) and (k) read with Sections 129 and 130 of the Act for non-compliance of Regulation 7(h) of the Trading Licence Regulations and in terms of Regulation 13 thereof. The present matter is also within the jurisdiction of the Commission since GEPL was trading in the electricity in the course of inter-state trade and the contract between the Petitioner and GEPL was not back-to-back with the contract between GEPL and the buyer, MeCL.

Hearing dated 20.8.2019

5. After admitting the matter on 20.8.2019, the Commission directed parties to complete the pleadings in the matter.

IA No. 50/IA/2020 dated 20.08.2020

6. Meanwhile, the Respondent, GEPL has filed IA No.50/2020 saying that the present petition is not maintainable, as there is no jurisdiction which vests in this Commission for adjudication of the present dispute. The Petition pertains to a commercial dispute between two trading licencees, which cannot be adjudicated by this Commission under Section 79 of the Electricity Act, 2003.

Hearing dated 23.6.2022

7. During the hearing dated 23.6.2022, the learned counsel for the Petitioner prayed for an adjournment due to non-availability of the arguing counsel. Learned counsel of the Respondent, GEPL submitted that the Corporate Insolvency Resolution Process (CIRP) has been initiated against GEPL and pursuant thereto, an Interim Resolution Professional (IRP) has also been appointed. Learned counsel further submitted that as he was representing the erstwhile management of the respondent, he may be discharged from the instant matter.

8. After considering the submissions made by the learned counsels for the parties, the Commission adjourned the matter and directed to issue notice to the Respondent, GEPL through IRP to clarify its current position qua CIRP.

Hearing dated 15.12.2022



9. During the course of hearing, the learned counsel appeared on behalf of the Resolution Professional (RP), managing the affairs of the Respondent Company pursuant to its admission to Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 ('IBC'), submitted that in terms of order dated 2.12.2019 of the National Company Law Tribunal (NCLT), Mumbai Bench in CP(IB) 2520/MP/ 2018, a moratorium has been declared against the Respondent Company under Section 14 of the IBC thereby prohibiting the institution of suits or proceedings of pending suits or any actions against the Corporate Debtor (Respondent Company) in any court of law, tribunal, arbitrator panel or other authority. Learned counsel further submitted that current RP has been appointed vide order of NCLT dated 3.8.2022 and thus, the additional time may be allowed to file vakalatnama and certified copy of the aforesaid order of NCLT, Mumbai. Learned counsel stated that since 3.8.2022, four meetings of Committee of Creditors have already taken place.

10. In response to the specific query of the Commission regarding continuity of moratorium, learned counsel appearing on behalf of RP submitted that the aforesaid order of NCLT, admitting the Respondent Company to CIRP, was challenged before the NCLAT and the Hon'ble Supreme Court and the period for which the stay granted by them on CIRP is to be excluded from computing the period of CIRP.

11. Learned counsel for the Petitioner submitted that despite the direction of the Commission vide Record of Proceedings for the hearing dated 22.9.2022, no reply has been placed on record by the RP on behalf of the Responded Company. Learned counsel further submitted that RP/Respondent has failed to place on record



any documents indicating the status of the CIRP against the Respondent Company. Learned counsel added that liberty may be granted to the Petitioner to file its claims against the Respondent before the RP.

12. After hearing the learned counsel for the Petitioner and the learned counsel appearing on behalf of the RP for the Respondent Company, the Commission directed the RP for the Respondent Company to place on record the current status with regard to its CIRP including sequence of events since order of NCLT, Mumbai dated 2.12.2019 within two weeks with copy to the Petitioner, who may file its response thereon, if any, within a week thereafter. Subject to that, the Commission reserved order in the matter.

Analysis and Decision

A. Jurisdiction Issue

13. Sections 79(1)(e) and 79(1)(k), in conjunction with Sections 129 and 130 of the Act, 2003 and Regulations 7, 8, and 13 of the Trading License Regulations, 2009, grant the Commission the authority to issue orders directing GEPL to comply with Regulation 7 (h) and pay the outstanding amounts in accordance with the Lol. Since GEPL is a Category-I inter-state trading licensee and was granted the license by the Commission in accordance with Section 12 read with Section 14 of the Electricity Act, 2003, and is obligated to abide by the Commission's Trading Regulations, the Commission possesses the authority to issue necessary orders. As per Regulation 13(5) of the Trading License Regulations, 2009, the Commission possesses the authority to issue suitable directives in cases of non-compliance. GEPL has contravened Regulation 7 (h) of the Trading License Regulations by



neglecting to remit payments in accordance with the Letter of Intent (LOI) for the power transfer from BYPL to GEPL. Given that the transaction involving BYPL and GEPL occurred during an inter-state transfer of electricity and that there were no back-to-back agreements between the Petitioner, GEPL, or GEPL and its buyers, the Commission possesses the authority to oversee the Respondent and issue orders required to resolve the dispute between the involved parties.

(B) Direction to Global Energy Private Ltd. to perform its obligations under Regulation 7 (h) of the Trading License Regulations and pay the outstanding dues of Petitioner in terms of the LOI amounting to Rs. 18.98 crores including LPSC amount of Rs. 7.53 crores.

14. Global Energy Pvt. Ltd. (GEPL) pursuant to its admission to Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 ('IBC'), submitted that in terms of the order dated 2.12.2019 of the National Company Law Tribunal (NCLT), Mumbai Bench in CP(IB) 2520/MP/ 2018, a moratorium has been declared against the Respondent Company under Section 14 of the IBC thereby prohibiting the institution of suits or proceedings of pending suits or any actions against the Corporate Debtor (Respondent Company) in any court of law, tribunal, arbitrator panel or other authority.

15. The Hon`ble Supreme Court vide its Order dated 31.03.2022 has disposed of the Petition with the direction that NCLT shall proceed with the Corporate Insolvency Resolution Process and the parties may raise their claims before the NCLT.

“By an order dated 26.02.2021, this Court admitted this appeal filed against an order dated 09.02.2021 passed by the NCLAT, dismissing the appeal



filed by the appellant, being Company Appeal (AT) (Insolvency) No.1415 of 2019 against an order dated 02.12.2019 passed by the Bombay Bench of National Company Law Tribunal, admitting Company Petition (IB) No.2520/MB/2019 under Section 9 of the Insolvency and Bankruptcy Code, and stayed further proceedings in the NCLAT until further orders of this Court.

On 03.03.2022, learned Counsel appearing on behalf of the appellant gave an undertaking to this Court to make payment of the entire principal amount due and payable to the respondent within three weeks from the aforesaid date. The matter was directed to be listed on 28.03.2022.

It has been brought to the notice of this Court that in breach of the undertaking, the appellant has not made any payment. The appeal is, accordingly, dismissed and the interim order granting stay of proceedings before the NCLAT/NCLT stands vacated.

The NCLT shall proceed with the Corporate Insolvency Resolution Process. The parties may raise their claims before the NCLT. All applications shall stand disposed of accordingly”

16. Thereafter, NCLT Mumbai bench vide its Order dated 6.5.2022 appointed an IRP from the panel of Insolvency Professionals. GEPL submitted that the Corporate Insolvency Resolution Process (CIRP) has been initiated against GEPL and pursuant thereto, an Interim Resolution Professional (IRP) has also been appointed. Learned counsel further submitted that as he was representing the erstwhile management of the respondent, he may be discharged from the instant matter.

17. Recently in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Private Limited, the Supreme Court of India vide CIVIL APPEAL NOS. 7976 OF 2019 ruled

that the Insolvency and Bankruptcy Code, 2016 (IBC) overrides the Electricity Act, 2003. While dismissing the appeal of Paschimanchal Vidyut Vitran Nigam Limited (PVVNL), the Court provided crucial clarification regarding the rights of creditors operating under the IBC. This clarification encompasses both secured and unsecured creditors, ensuring that they hold priority in having their debts repaid before any dues owed to the State or Central Governments are settled. In essence, this ruling reinforces the principle of prioritizing private creditors' claims over government obligations when it comes to resolving insolvency matters.

18. In the appeal before the Supreme Court, PVVNL contended that the Electricity Act is a 'special enactment' and therefore should prevail over IBC which is a 'general law'. However, the Supreme Court held that the NCLT and the NCLAT rightfully set aside the attachment of the property of the corporate debtor and held that PVVNL can realize its dues by participating in the liquidation process as per the IBC. The Supreme Court held that section 238 of the IBC overrides the Electricity Act. The Supreme Court emphasized that the dues owed to creditors under the IBC hold a superior position compared to the electricity dues payable under the Electricity Act.

"52. The views expressed by the present judgment finds support in the decision reported as Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs³⁸. In that case, Section 142A of the Customs Act 1962 was in issue – authorities had submitted that dues payable to it were to be treated as 'first charge' on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC,

"55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent? The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited



jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

Answered in negative.

56. On the basis of the above discussions, following are our conclusions:

(i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

(iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.” Similarly, in Duncans Industries Ltd. v. AJ Agrochem³⁹, Section 16G of the Tea Act, 1953 which required the prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in ³⁹ Duncans Industries Ltd. v. AJ Agrochem, (2019) 9 SCC 725. ³³ Sundaresh Bhatt and Duncan Industries (supra) [refer also: Innoventive Industries (supra), CIT v. Monnet Ispat & Energy Ltd. ⁴⁰ , Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. ⁴¹ , and Jagmohan Bajaj v. Shivam Fragrances Private Limited⁴²].

53. In view of the above discussion, it is held that the reliance on Rainbow Papers (supra) is of no avail to the appellant. In this court’s view, that judgment has to be confined to the facts of that case alone.”

19. Accordingly, we are of the view that the Petitioner should raise the claim before the CIRP. Post the decision of the National Company Law Tribunal (NCLT)/National Company Law Appellate Tribunal (NCLAT), should the Petitioner have any unresolved issue qua the Respondent in connection with the Trading



License Regulations, it shall be at liberty to approach the Commission.

20. The Petition No. 131/MP/2019 is disposed of in terms of the above.

**Sd/
(P.K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(I.S. Jha)
Member**

