

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 193/MP/2021**

**Coram:**

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

**Date of Order: 8<sup>th</sup> November, 2023**

**In the matter of**

Petition under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003 inter-alia seeking a direction to the Respondents to refund the amounts wrongfully deducted by the Respondents from the Bills raised by the Petitioner and a direction to the Respondents to execute Supplementary Power Purchase Agreements under Round (iii) of the Shakti Scheme before 30.9.2021.

**And**

**In the matter of**

**Adhunik Power and Natural Resources Limited,**  
9B, 9th Floor,  
Hansalaya Building 15,  
Barakhamba Road,  
Connaught Place,  
New Delhi- 110001

..... **Petitioner**

**Vs**

**1) Tamil Nadu Generation and Distribution Corporation Limited,**  
NPKRR Maligai, 6th Floor,  
Eastern Wing, 144,  
Anna Salai, Chennai-600002.  
Tamil Nadu.

**2) PTC India Limited,**  
2nd floor, NBCC Tower,  
15, Bhikaji Cama Place,  
New Delhi - 110066

..... **Respondents**

**Parties present:**

Shri Deepak Khurana, Advocate, APNRL  
Shri Vineet Tayal, Advocate, APNRL  
Ms. Nishtha Wardha, Advocate, APNRL  
Shri Amit Griwan, Advocate, APNRL



Shri Ravi Kishore, Advocate, PTC  
Shri Dhruv Tripathi, Advocate, PTC  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Shri Rahul Ranjan, Advocate, TANGEDCO

### **ORDER**

The Petitioner, Adhunik Power and Natural Resources Limited (in short 'APNRL'), has filed the present Petition under Section 79(1) (b) read with Section 79(1) (f) of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), *inter alia* seeking a direction to Respondents to refund the amounts wrongfully deducted from the bills raised by the Petitioner and a direction to Respondents to execute the Supplementary Power Purchase Agreements under Round (iii) of the Shakti Scheme before 30.9.2021. The Petitioner has made the following prayers:

- “(a) Direct the Respondents to refund an amount of Rs. 82,53,624/, deducted by the Respondents from the Bills raised by the Petitioner for the period Jul-2019 to May-2021 as detailed in Para 20 (Annexure P-27);*
- (b) Direct the Respondents to consider GCV of coal received under Shakti Scheme on 'as received basis' for all future Bills raised by the Petitioner under the Power Purchase Agreements;*
- (c) Direct the Respondents to sign the Supplementary PPA in compliance of Round (iii) of Shakti Scheme;*
- (d) Grant Late Payment Surcharge as per the terms of the PPA from the date(s) on which the aforesaid amount(s) became due to the Petitioner till the actual realization of the same;*
- (e) Pending final adjudication of the present Petition, pass an ex-parte ad-interim Order directing the Respondents not to make any deductions by considering GCV on any basis other than 'as received basis' from the Bills already raised but not paid and from the future Bills of the Petitioner;*
- (f) Pending final adjudication of the present Petition, pass an ex-parte ad-interim Order directing the Respondents to forthwith sign the Supplementary PPA in compliance of Round (iii) of Shakti Scheme;*
- (g) Pending final adjudication of the present Petition, pass an ex-parte ad-interim Order directing the Respondents to make payment of Rs. 74,28,262/- crores i.e. 90% of the deducted amount by the Respondent No. 1 from Jul-2019 to May-2021;*
- (h) Pass such other and further Orders as this Commission may deem fit in the facts and circumstances of the present case.”*

## **Submissions of the Petitioner**

2. The Petitioner has mainly submitted as under:

(a) The Petitioner has set up a 540 MW Thermal Power Project (hereinafter referred to as the “generating station”) in District Saraikela-Kharswan in the State of Jharkhand. On 18.12.2013, Respondent No. 1, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Respondent No. 2, PTC India Limited (PTCIL) entered into a Power Purchase Agreement for the supply of 100 MW power for a period of fifteen years for meeting the TANGEDCO’s base load power requirements. On 19.12.2013, the Petitioner entered into a back to back Power Purchase Agreement (PPA) dated 18.12.2013 with Respondent No. 2, PTCIL. The Petitioner commenced power supply to the Respondents from 1.1.2016 from its Power Plant.

(b) The Petitioner participated in the auction process under the ‘Shakti Scheme’ and offered a discount of three paise per kWh for securing the coal linkage for the supply of power to the extent of coal supplied under the said scheme, as per the PPAs. Accordingly, the Commission, vide its order dated 18.5.2018 in Petition No. 84/MP/2018 approved the Supplementary PPA dated 8.5.2018 executed between the Petitioner and Respondent No. 2, PTCIL and the Supplementary PPA dated 10.5.2018 executed between Respondent No. 2, PTCIL and Respondent No. 1, TANGEDCO along with the consequential amendments, in respect of the supply of 100 MW power for passing on discount in tariff to the procurer in terms of Clause B(ii)(b) of the Shakti Scheme.

(c) In view of the provisions mentioned under the Shakti Scheme and terms & conditions of the PPAs, the Petitioner started raising bills/invoices from July 2019 (which provide for the discount offered on an ‘as received basis’), considering the GCV of coal on an ‘as received basis’ for the period from July 2019 to July 2020 and the same were duly accepted by Respondents.

(d) Meanwhile, on 30.1.2020, Coal India Limited (‘CIL’) issued another Shakti Scheme B(ii)- 3rd round tender document. In terms of Clause 4.1.2.1 of the tender document, thermal plants whose linkage quantity was less than 90% of their coal requirements were eligible. It would be relevant to mention that the Petitioner was not able to secure the coal linkage for full contracted capacity in the earlier Shakti

Scheme Bid (ii) Round (i) and thus, was eligible to participate in the aforesaid Shakti Scheme B(ii) - 3rd Round.

(e) Accordingly, the Petitioner participated in the Shakti Scheme B(ii) - 3rd Round for securing coal linkage for the long-term Power Purchase Agreements. On 13.2.2020, Respondent No. 1, TANGEDCO accorded its consent (verification certificate) to the Petitioner for participating in the Shakti Scheme B(ii) - 3rd Round.

(f) On 14.7.2020, Central Coalfield Limited issued a Letter of Intent to the Petitioner for the quantum of 99,000 tones/ annum @ 8 paisa/kwh discount for the power to be supplied from the Petitioner's Plant. Thereafter, vide email dated 23.7.2020, the Petitioner informed the Respondents that it has been identified as the successful bidder in Shakti Scheme B(ii) - 3rd Round and requested the Respondents to send a Draft Supplementary PPA to the Petitioner.

(g) The Petitioner continued to raise its invoices on the Respondents from August 2020, considering the GCV of coal on an 'as received basis', in view of provisions in the Shakti Scheme and the terms & conditions of the PPAs.

(h) Respondent No. 1, vide its letter dated 10.12.2020, for the first time, purportedly sought to raise a dispute with regard to the bills raised by the Petitioner for the period from July 2019 to July 2020 and informed Respondent No. 2 that Respondent No. 2 had calculated the discount under the Shakti Scheme for the period from July 2019 to July 2020 considering the GCV on an 'as received basis', whereas, Respondent No. 1 had calculated the discount with the GCV at coal sources. Accordingly, an amount of Rs. 42,50,644/- towards the differential amount due to GCV was deducted from the outstanding bills of the Petitioner.

(i) In this regard, the Petitioner, while pointing out the provisions mentioned under Schedule 4A of Addendum No. 01 of the PPA dated 19.2.2013 which expressly provides that GCV shall be calculated on 'as received basis', vide its letter dated 22.12.2020, informed the Respondents that the purported deductions made by Respondent No. 2 were contrary to the provisions contained in the PPAs executed between the parties.

(j) Admittedly, the purported dispute sought to be raised by Respondent No. 2 with regard to the bills raised by the Petitioner for the period from July 2019 to July 2020 was raised in December 2020 i.e. much after the expiry of the stipulated period of 32 days. Accordingly, the Petitioner requested Respondent No. 1 to comply with

the terms of the PPA and refund the balance amount of Rs. 42,50,644/-, which had been wrongfully deducted by Respondent No. 1. Pertinently, the Respondents have not responded to the aforementioned communications of the Petitioner.

(k) Meanwhile, the Ministry of Power issued an Office Memorandum dated 10.12.2020, containing the Minutes of the Meeting to discuss the 'signing of pending FSA with the successful bidders under round 3rd Shakti B(ii) linkage auctions'. In the said minutes of the meeting, it was recommended that nine months might be given from the date the CERC resumes functioning for the signing of the FSAs under round 3rd Shakti B(ii).

(l) The Petitioner, referring to the minutes of a meeting wherein Respondent No.1 had asked the Petitioner to consider GCV on an "as billed basis" instead of an "as received basis", requested the Respondent No. 2 to sign the PPA under the Shakti Scheme round 3rd B (ii). the Petitioner also referred to the Tariff Regulations of the CERC as well as the Tariff Regulations of various State Electricity Regulatory Commissions and submitted that in view of the settled position borne out from the said Tariff Regulations, the insistence of Respondent to consider GCV of coal on 'as source basis' is contrary to the regulatory framework.

(m) In response to the above communications, no reply was received from the Respondents. However, Respondent No. 1, TANGEDCO, vide its letter dated 27.4.2021, informed that PTCIL had calculated the discount under the Shakti Scheme for the period from the months of August, 2020 to February, 2021 considering the GCV on an 'as received basis'. Respondent No. 1, TANGEDCO further stated that it had calculated the discount with GCV at coal sources. In view of the above, Respondent No. 1 stated that an amount of Rs. 26,34,968/- towards the differential amount due to GCV was deducted from the outstanding bills of the Petitioner.

(n) The Petitioner, vide its letter dated 10.5.2021 informed TANGEDCO that GCV documents so submitted (GCV Test Certificate) certified the GCV of coal consumed (as received basis) and thus, to alter the basis of the same by taking GCV on 'at coal sources' is incorrect.

(o) Consequent to the above, the Respondent had deducted the cumulative amount of Rs. 93,08,885/- from the various invoices raised for the period from July 2019 to October 2021.

### **Hearing dated 22.3.2022**

3. The Petition was admitted on 22.3.2022, and notices were issued to the Respondents to file their replies within the stipulated time period. The Respondents and the Petitioner have filed their respective replies and rejoinders.

### **Hearing dated 28.6.2023**

4. During the course of the hearing, the learned counsel for the Respondent, TANGEDCO submitted that the dispute involved in the matter has been resolved and the Shakti Scheme discount as withheld is being released under the Electricity (Late Payment Surcharge and related matters) Rules, 2022. In response, the learned counsel for the Petitioner confirmed the submissions made by the learned counsel for TANGEDCO and further added that the only remaining issue was the Late Payment Surcharge (LPS) thereon. The learned counsel submitted that the Petitioner had received a letter from PTCIL (along with a letter from TANGEDCO to PTCIL) requiring the Petitioner to raise supplementary invoices for the LPS and, accordingly, requested that the hearing of the matter be deferred. Additionally, the Petitioner sought the grant of the LPS, in accordance with the terms of the PPA, from the date it was due until the actual realization of the amount.

5. In response, the learned counsel for the Respondent, TANGEDCO opposed the request of the Petitioner for deferment of the hearing and submitted that the Petitioner's entire claim had been admitted under the LPSC Rules, 2022 and the Petitioner is trying to keep the Petition open for a subsequent LPS claim that had not been invoiced yet. The learned counsel suggested that both sides be allowed to file their charts indicating the details of payments and the matter may be reserved for order.

### **Reply of the Respondent No. 1 TANGEDCO**

6. The Respondent, TANGEDCO, in its reply dated 17.7.2023, has mainly submitted

as under:

(a) The Petitioner has claimed a refund of Rs. 93,08,883.00 deducted by Respondent No.1, TANGEDCO from the bills raised by the Petitioner for the period from the months of July 2019 to October 2021 wherein the Petitioner offered and calculated a discount under the Shakti Scheme considering the GCV on an 'as received basis', whereas Respondents calculated the said discount considering the GCV at coal source.

(b) TANGEDCO has already taken all the differences into consideration and admitted the same, as is reflected in the approval of the monthly bill of April 2022 raised by Respondent No. 2.

(c) On 17.6.2022, the Board of TANGEDCO resolved to submit its proposal for liquidation of total outstanding dues owing to generating companies, as on the date of notification of the LPSC Rules, along with the proposed schedule of instalments, as envisaged under Rule 5(2) of the LPSC Rules and the same was communicated to the PTCIL vide letter dated 1.7.2022

(c) In continuation of the said letter dated 1.7.2022, the outstanding dues as on 3.6.2022 as per TANGEDCO's books of account were communicated to the PTCIL on 3.8.2022 as under:

Sr. No.	Details	Amount (in Rs.)	Remarks
1.	Energy dues after deducting TDS	32,15,57,751.00	Supplementary Bill (December 2018 to February 2019), March 2022 balance and April 2022
2.	Change in Law	13,36,22,837.00	CIL for the period from November 2020 to April 2022 & to be reconciled since documents are awaited.
3.	LPSC dues after deducting TDS	10,81,72,383.00	LPSC for the period from April 2021 to March 2022 up to May 2022.
	<b>Total</b>	<b>56,33,52,971.00</b>	

**NOTE:** Amount of Rs. 93,09,833.00 included in the monthly bill of April 2022 and forming part of Rs. 32,15,57,751.00.

(d) The Petitioner has admitted the same in its letter dated 26.5.2023, wherein the Petitioner has stated that "TANGEDCO has considered the said Shakti discount withheld amount of Rs.93,08,883.00 in the Electricity (Late Payment



Surcharge & related matters) Rules, 2022 and the said amount being released as per the said rules on monthly basis”. However, despite acknowledgement of receipt of payment as claimed in the Petition, the Petitioner during the hearing on 28.6.2023, sought deferment of the hearing alleging that the LPS was payable on the withheld amount under Shakti Discount Scheme in terms of prayer (d) of the Petition.

(e) Neither the Petitioner nor Respondent No. 2, PTCIL, have raised any supplementary invoice towards the LPS. As such, the claim for the LPS in prayer (d) of the Petition is misconceived, in as much as no invoice for the said amount was raised at any stage. The outstanding dues having already been rescheduled under the LPSC Rules, it is not open to the Petitioner to claim the LPS at this belated stage. Furthermore, since no invoice was raised, an LPS claim cannot be introduced in the current Petition solely based on a vague prayer without any supporting details or pleadings. Consequently, such a claim for the LPS is not applicable to the present Petition and falls outside its scope.

### **Rejoinder by the Petitioner**

7. The Petitioner, in its rejoinder dated 18.8.2023, has mainly submitted as under:

(a) During the pendency of the present Petition, Respondent No.1 admitted the difference in the principal amount, which is the main amount for which the Petitioner was seeking a refund in this Petition. This admission was made by Respondent in its submission dated 17.7.2023, filed before this Commission, specifically in Paragraphs 6 and 7 of the submission. While Respondent admitted to the principal amount of Rs. 93,08,833 owed for the period from July 2019 to October 2021, it did not include the corresponding LPS payable for the same period in its admission.

(b) Despite the fact that Respondent No. 1 claims to have settled the aforementioned principal outstanding under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ('LPSC Rules'), which rules specifically provides for payment of the LPS on the outstanding dues, till at least the date of notification of the said rules, being 3.6.2022. In this regard, the Petitioner vide its letter dated 26.5.2023 requested the Respondent to pay the remaining balance amount along with the LPS'



(c) The Petitioner has specifically claimed the 'LPS' on the amounts due & payable to the Petitioner, more specifically in prayer (d) of the present Petition. The said aspect has also been specifically recorded by the Commission in Para 2 of the ROP for the hearing dated 28.6.2023. In other words, therefore, the aforesaid claim towards 'LPS' is duly covered within the present Petition.

(d) As per the PPA, the Petitioner is entitled to claim the 'LPS'. Therefore, the denial of Respondent No. 1 to pay the applicable LPS, is a clear violation of the PPA.

(e) The contention of Respondent No. 1 that the outstanding dues have already been rescheduled under the LPSC Rules, and as such, it is not open for the Petitioner to claim the LPS at this belated stage, is wholly erroneous. As stated above, the LPSC Rules specifically require & mandate payment of the LPS on the outstanding dues.

(f) Respondent No. 2 vide its email dated 27.6.2023 (one day prior to the hearing dated 28.6.2023), forwarded Respondent No. 1's communication calling upon the Petitioner to submit its supplementary invoice towards the LPS. Pursuant thereto, the Petitioner raised its supplementary invoice dated 11.7.2023 along with its computation.

(g) Reliance placed by Respondent No. 1, TANGEDCO, upon Order dated 6.9.2022 in Petition No. 173/MP/2019, is wholly misleading and erroneous. A perusal of Para 14 of the said order, would show that the said Petition sought a relief for payment of the future LPS and not of the LPS pertaining to the 'outstanding dues' of the past. In this respect, while noting that no cause of action had arisen with regards to the non-payment of future dues, the Commission vide its aforesaid order granted the liberty to the Petitioner therein to exercise its rights in the event of non-payment of dues in the future.

### **Analysis and Decision**

8. We have considered the submissions of the Petitioner and the Respondents and perused the documents on record. After considering the submissions of the learned counsels appearing on behalf of the parties it is revealed that during the pendency of the present Petition, parties have already resolved the dispute involved in the matter and the

SHAKTI Scheme Discount as withheld by Respondent No. 1 is being released under the provisions of the Electricity (Late Payment Surcharge and related matters) Rules, 2022. Accordingly, the only issue that arises for our consideration at this stage is whether the Petitioner is entitled to the LPS on the delayed payment of the energy bill for the supply of power during the disputed period.

9. The Respondent, TANGEDCO has submitted that in terms of the LPSC Rules, on 17.6.2022, the Board of TANGEDCO resolved to submit its proposal for liquidation of total outstanding dues owing to generating companies, as on the date of notification of the LPSC Rules, along with the proposed schedule of instalments, as envisaged under Rule 5(2) of the LPSC Rules. The communication regarding the rescheduling of outstanding dues was communicated to Respondent No. 2, PTCIL well within the 30-day period, in terms of Rule 5(2) of the LPSC Rules, by way of letter dated 1.7.2022. Therefore, the claim for the LPS in prayer (d) of the Petition is misconceived, inasmuch as no invoice for the said amount was raised at any stage. The outstanding dues have already been rescheduled under the LPSC Rules, it is not open to the Petitioner to claim the LPS at this belated stage. In any event, not having raised any invoice, no claim for the LPS can be introduced in the present Petition, merely on the basis of a vague prayer bereft of any details or pleadings in support. Therefore, such a claim for the LPS cannot be urged in the present Petition and falls outside the subject matter of the present Petition. In support of its contention, the Respondent, TANGEDCO has relied upon the order dated 6.9.2022 in Petition No. 173/MP/2019 wherein the Commission has held that no party can be given direction to comply with the obligations under the PPA in future (which it, in any case, is contractually required to abide) without the cause having so arisen and without the aggrieved party having taken recourse to the remedial measures as provided /available to it.

10. Per contra, the Petitioner has submitted that LPSC Rules specifically require &

mandate payment of the LPS on the 'outstanding dues'. The stand of Respondent No. 1 in denying payment of LPS is in the teeth of the said LPSC Rules itself. The Petitioner, vide its letters dated 9.7.2022 & 26.5.2023 informed the TANGEDCO about the above position. The Respondent, TANGEDCO, vide its email dated 27.6.2023 (one day prior to the hearing dated 28.6.2023), informed the Petitioner to submit its supplementary invoice towards the LPS. Pursuant thereto, the Petitioner raised its supplementary invoice dated 11.7.2023 along with its computation. The reliance placed by Respondent No. 1 upon the order dated 6.9.2022 in Petition No. 173/MP/2019. is wholly misleading and erroneous. In the said Petition, relief was sought for payment of the future LPS and not of the LPS pertaining to the 'outstanding dues' of the past. In this respect, while noting that no cause of action had arisen with regard to the non-payment of future dues, the Commission vide said order dated 6.9.2022 granted the liberty to the Petitioner therein to exercise its rights in the event of non-payment of dues in the future. Therefore, said order is not applicable to the present case, inasmuch as, *inter-alia*, the Petitioner herein is claiming the LPS on the admitted and acknowledged dues of the past.

11. We have considered the submissions of the parties. In our view, LPS is a contractual right that arises upon default in payment of invoices within the due date. The intent behind incorporating the LPS clause in an agreement is to enforce/encourage timely payment of bills within the stipulated time. The rate of LPS is also provided in the agreement to avoid the time-consuming exercise of assessing the losses of individual power generating companies by reason of late payment of bills.

12. Article 8.4.3 of the PPA dated 19.12.2013 provides as under:

*"8.4 Payment Mechanism*

*8.4.3 Any payment properly due from one party to another pursuant to this agreement and remaining unpaid after the Due Date shall bear interest from the date the payment was due, such interest to accrue from day to day at a rate equal to SBIPLR for the time being and from time to time, from the Due Date until the*

*amount due is actually received by the payee.”*

As per the above provisions, if one party fails to make a payment that is legitimately owed to the other party, and this payment remains unpaid after the due date, it will accumulate interest. The interest will accrue daily at a rate equivalent to the SBI-PLR (State Bank of India Prime Lending Rate) that is currently in effect. This interest will continue to accumulate from the due date until the payee receives the outstanding amount.

13. It is noted that the Petitioner has supplied power to the Respondents in terms of the PPA dated 19.12.2013 during the period from July 2019 to October 2021 and has raised invoices in accordance with the Supplementary PPA.

14. Respondent No.1, TANGEDCO was deducting the over and above amount from the billed amount raised by the Petitioner, due to a difference in calculation methodology, as the Petitioner was using the GCV of coal on an ‘as received basis’; while the Respondent was considering the same on ‘as source basis’. The said aspect, however, came to be resolved between the parties. The differential amount which was deducted by Respondent No.1 between the period July 2019 and October 2021 was Rs. 93,08,833/- Respondent No.1, TANGEDCO in its submission dated 17.7.2023, has admitted the difference in the principal amount, which is the main amount for which the Petitioner was seeking a refund in this Petition. Further, the Respondent submitted that in accordance with the Electricity (Late Payment Surcharge and related matters) Rules, 2022 issued by the Ministry of Power, Government of India on 3.6.2022, Respondent, TANGEDCO has restructured the unpaid amounts, which is evident in the approval of the PTC's monthly bill for April, 2022. The Respondent, TANGEDCO, has further submitted that neither the Petitioner nor PTCIL have issued any supplementary invoice for the LPS up to this point.

15. It is imperative to note that the Petitioner consistently issued invoices for the entire sum, while the Respondent, TANGEDCO, unilaterally proceeded to deduct the

amount, which was subsequently admitted and agreed to be refunded, albeit under the dispensation available under the LPSC Rules. Thus, having accepted its liability to refund such unilaterally withheld amount, Respondent No.1, TANGEDCO, cannot escape its liability to reimburse such amount along with the LPS. However, in the absence of LPS invoice(s), Respondent No.1, TANGEDCO could not have factored into such an amount in its liquidation plan under the LPSC Rules. This, however, cannot disentitle the Petitioner from claiming the LPS on the unilaterally withheld amount by Respondents, particularly, when the Petitioner has been before this Commission since 2021 praying for the LPS on such withheld amount. Moreover, we notice that the Petitioner has computed its LPS claims only up to 3.6.2022 i.e. up to the date of notification of the LPSC Rules.

16. Though the Respondents have not disputed the aforesaid disputed amount in their reply, the Petitioner and the Respondents are directed to reconcile the amount within 15 days of this order and thereafter make the payment of the aforesaid outstanding LPS amount within a month.

17. Petition No. 193/MP/2021 is disposed of in terms of the above discussions and findings.

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

Sd/-  
**(Arun Goyal)**  
Member

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

Sd/-  
**(Jishnu Barua)**  
Chairperson