

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 29/MP/2022

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K.Singh, Member

Date of Order: 10th August, 2023

In the matter of

Petition under Section 79 of the Electricity Act, 2003 for execution of Order dated 19.12.2017 passed in Petition No. 229/MP/2016 and Order dated 06.01.2020 passed in Petition No. 208/MP/2018; 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 19.12.2017 passed in Petition No. 229/MP/2016 and Order dated 06.01.2020 passed in Petition No. 208/MP/2018

And

In the matter of

DB Power Limited,

3rd Floor, Naman Corporate Link,
Opp. Dena Bank, C-31, G-Block,
Bandra – Kurla Complex, Bandra (E),
Mumbai- 400051

...Petitioner

VERSUS

1. Tamil Nadu Generation & Distribution Corporation Limited,

Western Wing, 6th Floor, NPKRR Maaligai,
No. 144, Anna Salai,
Chennai- 600002, Tamil Nadu

2. Chairman Cum Managing Director,

Tamil Nadu Generation & Distribution Corporation Ltd.
Western Wing, 6th Floor, NPKRR Maaligai
No. 144, Anna Salai,
Chennai- 600002, Tamil Nadu

...Respondents

Parties present:

Shri Deepak Khurana, Advocate, DBPL
Ms. Nishtha Wadhwa, Advocate, DBPL
Ms. Rishika, Advocate, DBPL

ORDER

The Petitioner, DB Power Limited, has filed the present Petition purported to be filed under Section 142 of the Electricity Act, 2003 with the following prayers:

“(a) Direct the Respondents to comply with the Order dated 19.12.2017 passed in Petition No. 229/MP/2016 and Order dated 06.01.2020 passed in Petition No. 208/MP/2018 and to forthwith pay the pending aggregate amounts to the Petitioner i.e. an amount of Rs. 73,26,98,005/- (Rupees Seventy-Three Crores Twenty-Six Lacs Ninety-Eight Thousand and Five Only);

(b) Issue appropriate directions for execution of the Order dated 19.12.2017 passed in Petition No. 229/MP/2016 and Order dated 06.01.2020 passed in Petition No. 208/MP/2020 including passing an Order for attachment of Bank Account(s) of the Respondent No. 1 (upon disclosure of the same by the Respondent No. 1) to realize the amount payable to the Petitioner as aforesaid;

(c) Initiate appropriate action against the Respondents, jointly and severally, under Section 142 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003, for contravention and disobedience of the directions issued by the Hon'ble Commission in Order dated 19.12.2017 passed in Petition No. 229/MP/2016 and Order dated 06.01.2020 passed in Petition No. 208/MP/2018;

(d) In the interim and pending final adjudication of the present Petition, direct the Respondents to forthwith make payment of Rs. 65,94,28,204 (Rupees Sixty-Five Crores Ninety-Four Lacs Twenty-Eight Thousand Two Hundred and Four Only) i.e. 90% of the amount due, or any other reasonable amount as this Hon'ble Commission may deem fit in the facts & circumstances of the present case

(e) Pass such other and further order or orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case as also in the interest of justice.”

2. The matter was called out for the hearing on 3.8.2023. During the course of the hearing, learned counsel for the Petitioner submitted that there are certain subsequent developments in the matter and that the amount sought to be recovered by the Petitioner, except for a sum of Rs. 25 crore, has been included by the

Respondent in its rescheduling plan under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (in short, 'LPS Rules, 2022)'. Learned counsel further submitted that, keeping in view that this balance amount of Rs. 25 crore also forms part of the prayer made by the Petitioner and has not been included under LPS Rules, 2022, the present Petition survives to the above extent, and the Petitioner may be permitted to place on record the above development by way of an additional affidavit.

3. Learned counsel appearing on behalf of the Respondent, TANGEDCO, strongly opposed the request of the Petitioner to file an additional affidavit to bring on record the fresh/ additional facts in a Petition under Section 142 of the Act after having failed to file a rejoinder for more than a year. Learned counsel further submitted that pursuant to the enactment of LPS Rules, 2022, outstanding dues of the Petitioner were included in LPS Rules, 2022, way back in June, 2022, and the Petitioner was duly communicated so by its letter dated 1.7.2022. However, the Petitioner has failed to bring on record the above aspects, including its grievance with regard to the reconciled amount, for more than a year. Learned counsel submitted that if at all the Petitioner has any grievance in respect of the reconciled amount as included in the LPS Rules, 2022, it ought to approach the Commission by way of a separate Petition and the Petitioner cannot be permitted to keep the present Petition seeking to invoke the provisions of Section 142 of the Electricity Act, 2003, alive as a means for recovery under the PPA.

4. In response, learned counsel for the Petitioner submitted that the Petitioner was engaged in discussion with the Respondent with regard to the aforesaid amount. Learned counsel further submitted that the Commission, in its orders dated

19.12.2017 in Petition No. 229/MP/2016 and 6.1.2020 in Petition No. 208/MP/2018 has already held that the Petitioner is entitled to the aforesaid amount. Therefore, with the above amount being covered under the present Petition, the objection of the Respondent is misplaced.

5. After hearing the learned counsels for the parties, the Commission observed that since, as per the statement of the learned counsel for the Respondent, all outstanding dues of the Petitioner have already been included in the LPS Rules, 2022, way back in June 2022, no purpose would be served to keep the present Petition pending. In response, learned counsel for the Petitioner sought the liberty to approach the Commission by way of a separate Petition, if required. Learned counsel also prayed to adjust the filing fee paid in the instant Petition against the Petition to be filed in the future on the subject.

6. In view of the submissions of the learned counsels of the parties, the Petitioner is permitted to withdraw the present Petition. The filing fees paid in the present Petition shall be adjusted against the Petition to be filed by the Petitioner on the subject in the future, if any.

7. Accordingly, the Petition No. 29/MP/2022 is disposed of as withdrawn.

Sd/-
(P.K.Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson