

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/MP/2017

Coram:

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

Date of Order: 25th June, 2023

In the matter of

Petition under Section 79(1) (f) and 79(1) (b) of the Electricity Act, 2003 in connection with the disputes and differences arising under the Power Purchase Agreement dated 18.7.2008 between the Petitioner and Respondent No. 1.

And

In the matter of

Maithon Power Limited,
34 Sant Tukaram Road, Carnac Bunder,
Mumbai - 400009

...Petitioner

Vs

1. BSES Rajdhani Power Limited,
2nd Floor, B Block, BSES Bhawan, Nehru Palace
New Delhi – 110019
2. Tata Power Trading Company Limited,
34 Sant Tukaram Road, Carnac Bunder,
Mumbai-400 009

...Respondents

Parties Present:

Shri Shreshth Sharma, Advocate, MPL
Shri Nishant Talwar, Advocate, MPL
Ms. Doel Bose, Advocate, BRPL
Shri Ayush Mangal Gupta, Advocate, TPDDL



ORDER

Petition No. 4/MP/2017 has been filed by the Petitioner, Maithon Power Limited seeking the following relief(s):

- “(a) Issue appropriate directions to Respondent No. 1 to pay to the Petitioner an amount of Rs 1.77 Crores as differential price on account of the difference between the normative PPA tariff and the lower TPTCL rate at which Respondent No.2 has charged Respondent No. 1 from time to time, along with such carrying cost as this Hon'ble Commission may deem just and proper;*
- (b) Issue appropriate directions to Respondent No. 1 to pay to the Petitioner STOA charges amounting to Rs. 1.09 Crores which Respondent No. 2 had erroneously charged to the Petitioner along with late payment surcharge as per clause 7.4.5 of the PPA @ 1.25% per month from the date of invoice, i.e. 28.11.2011 till the date of actual payment;*
- (c) Direct Respondent No. 1 to pay the amount of Rs. 16.90 crores being the outstanding energy charges under invoice dated 22.11.2011 for the supply of power during the period 01.09.2011 to 30.09.2011 (including capacity charges for the un-availed power during the period 8.09.2011 to 14.09.2011) along with late payment surcharge as per clause 7.4.5 of the PPA @ 1.25% per month from the date of invoice till the date of actual payment;*
- (d) Direct Respondent No. 1 to pay the Petitioner an amount of Rs. 89.43 crores being the capacity charge for the un-availed power during the period October, 2011 to March, along with late payment surcharge as per clause 7.4.5 of the PPA @ 1.25% per month from the date of filing of this petition till the date of actual payment; and*
- (e) Pass such further and other Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.”*

Background

2. Tata Power Delhi Distribution Limited (*erstwhile NDPL*), on 17.9.2007, issued tender for procurement of power on short/medium basis for itself and also for Respondent No.1 BRPL and BYPL, through competitive bidding process. BRPL had authorized TPDDL to act as the nodal agency for carrying out such procurement of power on their behalf, as per tender documents and terms and conditions set out in the draft PPA. In response, the Petitioner, MPL submitted its bid on 30.10.2007 for supply of 309 MW power pm medium-term basis from its generating Unit-I of Maithon Right Bank Thermal Power Plant, which was to be commissioned on 1.10.2010. The



Petitioner was declared as lowest bidder and on 28.3.2008, DERC issued direction to TPDDL to issue LOI to the Petitioner. On 29.3.2008, TPDDL issued LOI to the Petitioner, to supply 309 MW of power to BRPL and itself ('Procurers'), which was to be shared in the ratio of 50:50 between the Procurers i.e 154.5 MW each to BRPL and TPDDL. BYPL did not opt to procure power from the Petitioner. Subsequently, on 18.7.2008, the Petitioner executed PPA with BRPL for supply of 154.5 MW power on round the clock basis, for the period from 1.10.2010 to 31.3.2012. The DERC vide its order dated 10.6.2009, adopted the tariff of Rs. 3.48/kWh (as quoted by Petitioner) for supply to BRPL under the PPA.

3. Certain disputes had arisen between the Petitioner and Respondent No.1 BRPL in relation to the said PPA, on the following issues:

- (a) Under recovery of price for the power supplied through Respondent TPTCL (trading company) in terms of PPA.*
- (b) Recovery of STOA charges paid by the Petitioner to the Respondent No. TPTCL towards supply of power made to Respondent No.1 BRPL.*
- (c) Recovery of charges for energy supplied by Petitioner to BRPL during the period September 2011 (including capacity charges for un-availed power).*
- (d) Recovery of capacity charges for un-availed power for the period from 1.10.2011 to 31.12.2011 and onwards.*

4. The Petitioner has submitted that it had filed Petition No. 10/2012 before DERC raising the aforesaid issues, and DERC vide its order dated 10.9.2013, rejected the said petition, holding that it has no jurisdiction to adjudicate the disputes, as the Petitioner has a composite scheme for generation and supply of electricity. This order was challenged by the Petitioner before APTEL in Appeal No. 306/2013 and APTEL vide its judgment dated 14.7.2016, upheld the decision of DERC, thereby relegating the parties to this Commission, for adjudication of disputes. In the above background, the Petitioner



has filed this petition under Section 79(1)(f) read with Section 79(1)(b) of the Act seeking the reliefs, as stated in paragraph 1 above.

Hearing dated 16.5.2017

5. This Petition was heard on 'admission' on 16.5.2017 and the Commission 'admitted;' the petition, with directions to the parties, to complete pleadings in the matter.

6. This Petition was tagged with Petition No.5/MP/2017 (MPL v TPDDL & anr) and listed for hearing on various dates (27.7.2017, 14.9.2017, 11.1.2018, 19.4.2018, 5.7.2018, 11.12.2018, 15.2.2019, 16.4.2019, 4.7.2019, 20.8.2019, 5.3.2020 (through virtual mode), 22.10.2021, 21.4.2022, 15.7.2022). However, these petitions could not be finally heard, either due to paucity of time, or due to non-availability of counsel or due to request of parties to complete pleadings in these matters. Reply in the matter has been filed by the Respondent BRPL and the Petitioner has filed its rejoinder to the said reply.

7. The Respondent BRPL vide affidavit dated 14.2.2019, filed a counter claim in the said Petition claiming the following from the Petitioner:

(a) *Rs.113.61 crores as paid during the period April 2011 to August 2011 towards capacity charges; and*

(b) *Rs 99 crores. (Rs.19 crores as alternative in case availability claimed from September is accepted) as compensation / penalty for not achieving the normative availability of 80% as per the PPA.*

Hearing dated 22.9.2022

8. During the hearing of these Petitions on 22.9.2022, the learned counsel for the Petitioner, while submitting that the Petitioner is not pressing for the reliefs (a) and (b) sought in the said petition, made detailed oral submissions in the matter. The



Commission, however directed the Petitioner to file additional affidavit seeking amendments to the original petition. Matter was Part-heard. However, the Commission, requested the parties to explore possibilities for an amicable settlement of all outstanding issues and accordingly postponed the hearing of the petitions. The parties were also directed to file reconciliation statement, if any, based on the amicable settlement.

9. In terms of the directions of the Commission, the Petitioner vide affidavit dated 10.10.2022 has filed amended petition, and has also replaced the prayers in the original petition, with the following prayers:

"(a) admit the present petition;

(b) direct Respondent No.1 to pay the charges towards outstanding energy charges for the supply of power during the period 01.09.2011 to 15.09.2011 (including Capacity Charges for the Un-availed Power during the period 8.09.2011 to 14.09.2011) along with late payment Surcharge as per clause 7.4.5 of the PPA @ 1.25% per month from the date of invoice till the date of actual payment;

(c) direct Respondent No. 1, to pay the Petitioner an amount of Rs. 87.79 Crores being the Capacity Charge for the Un-availed Power during the period October, 2011 to March, 2012 and claim towards prayer b, as computed in Table 8 of the Petition, along with late payment surcharge as per clause 7.4.5 of the PPA @ 1.25% per month from the date of filing of this petition till the date of actual payment;

(d) pass such other and further orders/ directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case."

Hearing dated 25.11.2022

10. During the hearing on 25.11.2022, the learned counsels for the Petitioner and the Respondent BRPL submitted that negotiations for settlement between the parties were at an advance stage and accordingly, prayed for postponement of hearing of the petitions. The Commission, accepted the said request and postponed the hearing, with directions to the parties to file a joint affidavit, spelling out the settlement arrived at



between the parties and thereafter, to mention the same for listing of the petitions for hearing, if any.

11. In compliance to the above directions, the Petitioner and the Respondent BRPL have filed a joint additional affidavit dated 1.6.2023, with the following prayers:

“11. Considering the aforesaid amicable and unequivocal settlement reached between the Parties, the Petitioner and Respondent No.1 jointly through the present Additional Submissions / Affidavit pray that this Hon’ble Commission may be pleased to:

(a) Take on record the binding MoU dated 31.03.2023 as executed between the Petitioner and Respondent No. 1;

(b) Permit the parties to withdraw the instant Petition along with their respective claims and counter claims against each other arising out of or in relation to the PPA including but not limited to the ones raised by them in the instant Petition in terms of clause 1.1 of MoU;

(c) xxx

Hearing dated 6.6.2023

12. During the proceedings of the Commission, on 6.6.2023, the learned counsels for the Petitioner and the Respondents, mentioned, that the parties in the petitions, had settled their disputes amicably and a joint affidavit has been filed, in compliance to the directions of the Commission. Accordingly, the learned counsels prayed that the settlement arrived at between the parties may be taken on record and the petitions may be disposed of in terms of the same.

Decision

13. As stated, the Petitioner and the Respondent BRPL, has filed a joint additional affidavit dated 1.6.2023, stating that the management of both the parties have approved the amicable and unequivocal settlement between the parties as agreed in writing in the form of a binding Memorandum of Understanding (MOU) dated



31.3.2023. Both the parties in the joint affidavit, have prayed to take the said MOU on record and to permit withdrawal of the petition accordingly.

14. In view of the submissions of the parties, the MOU dated 31.3.2023, is taken on record. Some of the relevant clauses in the said MOU, are extracted below:

I. SETTLEMENT TERMS

1.1 The Parties agree that BRPL will pay INR 13.72 Crores (As per the final Bill) for the power supplied under the PPA, subject to the following:

a) The Parties agree to jointly approach the Ld. CERC by way of appropriate applications / affidavits to withdraw all their respective claims and counter claims against each other arising out of or in relation to the PPA including the ones raised by them in the MPL CERC Petition.

b) Upon the Ld. CERC granting its imprimatur to the present settlement and permitting withdrawal of claims / counter claims as above (hereinafter referred to as "Order Date"), BRPL would, within 15 days thereof, make the aforesaid payment of Rs. 13.72 Crores (As per the final Bill). It is clarified that the aforesaid payment of INR 13.72 Crores (As per the final Bill) is exclusive of any late payment surcharge. It is also expressly agreed by and between the Parties that no late payment surcharge will be payable by BRPL on the said amount of INR 13.72 Crores (As per the final Bill).

c) It is clarified that the amount of INR 13.72 Crores (As per the final Bill) represents the full and final amount for all the claims / counter claims raised by the Parties against each other and that the Parties shall not have any other / further claims / counter claims qua each other arising out of or in relation to the PPA.

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II. COSTS AND EXPENSES

3.1 Each Party hereto shall bear its own expenses, costs and attorney fees in negotiation, preparation and execution of this MoU and all related and/or ancillary documents.

3.2 The Parties agree that pursuant to the execution and fulfilment of this MoU, they shall have no claims whatsoever against each other or, its directors, affiliates, group companies, related entities, parent companies, subsidiaries, including their respective directors, officers, employees, representatives and/or agents except for as specifically set forth in this MoU."

15. The Respondent No.2 TPTCL has also filed an additional affidavit dated 2.6.2023 and has prayed that the same may be taken on record. The said additional



affidavit is taken on record. In the said affidavit, TPTCL has submitted that the following:

“9. The Respondent herein acknowledges and confirms to the Hon’ble Commission that it has no claims whatsoever against the Petitioner (MPL) and / or Respondent No.1 (BRPL) either in relation to or under the PPA. The Respondent herein also acknowledges and confirms that it would not raise any claims / challenges against the Petitioner and / or Respondent No. 1 under or in relation to the PPA, either before this Hon’ble Commission or any other fora”

16. In consideration of the submissions of the parties that all disputes between the Petitioner and the Respondent BRPL, have been amicably resolved in terms of the MOU dated 31.3.2023 (filed vide joint affidavit dated 1.6.2023), the Petition No.4/MP/2017, is disposed of as withdrawn.

17. Petition No.4/MP/2017 is disposed of in terms of the above.

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

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

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

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

