

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 91/MP/2018

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.07.2012 as amended on 19.12.2014 and 23.01.2018 in regard to non-payment of tariff and unilateral deduction of the monthly energy bills of the Petitioner by the Respondents.

Petition No.53/MP/2021 along with IA 26/2003 & 100/2023

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the PPA dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

Petition No.61/MP/2021 along with IA. 28/2021 & 42/2022

Subject : Petition under Section 79(1)(f) and (k) of the Electricity Act, 2003 for adjudication of disputes arising on account of termination of the Power Purchase Agreement dated 31.7.2012 by Respondent Nos. 1 and 2.

Petition No.149/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

Petitioner : KSKMPL

Respondent : APEPDCL and 3 Ors.

Date of Hearing : **13.5.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties present : Shri Anand K. Ganesan, Advocate, KSKMPL
Ms. Harsha V. Rao, Advocate, KSKMPL
Ms. Aishwarya Subramani, Advocate, KSKMPL
Ms. Sanjukta Das, Advocate, KSKMPL
Shri Sanjay Sen, Senior Advocate, AP Discoms



Shri Ruth Elwin, Advocate, AP Discoms
Shri S. Vallinayagam, Advocate, AP Discoms
Ms. Neha M. Dabral, Advocate, AP Discoms
Shri K. Sudheer, AP Discoms
Shri V. Venkateswarulu, AP Discoms
Shri K.G. Sreenivasulu, AP Discoms

Record of Proceedings

During the hearing, the learned counsel for the Petitioner submitted that they have filed the affidavit requesting arbitration in the matter. He also pointed out that whilst earlier the Respondents had agreed to refer the dispute to arbitration, now they are opposing arbitration.

2. The learned senior counsel for the Respondent explained that they are opposing arbitration on the ground of jurisdiction as the present dispute relates to the breach of contract and does not fall within the subjects covered under Section 79(1)(f) read with Section 79(1)(b) of the Electricity Act. He further submitted that an alleged contractual dispute between the parties, and the money claim sought by the Petitioner, can only be adjudicated by the State Commission or the Arbitral Tribunal upon reference made to it by the said Commission. Placing reliance on the Hon'ble Supreme Court's judgment in GUVNL v Essar Power Ltd (2008) 4 SCC 755, the learned Senior counsel submitted that Section 86(1)(f) alone provides for adjudication of the disputes between the generating company and licensee, on issues other than tariff determination or regulation, as per the legislative mandate of the Act.

3. In response to a specific query of the Commission regarding the arbitration clause in the PPA, the learned senior counsel for the Respondent agreed that there is an arbitration clause, and further submitted in detail that the disputes relating to tariff determination or regulation fundamentally differ from disputes relating to non-payment or short payment of tariff. He pointed out that the Commission's order dated 20.7.2021 in IA No. 68/2018 and 72/2018 (in Petition No. 91/MP/2018), settling the jurisdiction in the present dispute is required to be interpreted again in terms of the APTEL judgment dated 28.8.2024 in Appeal No. 309/ 2019 (MPPMCL v DVC & ors) as affirmed by the Hon'ble Supreme Court vide order dated 23.9.2024. He further submitted that in a matter relating to the termination of PPA and also the disputes arising under the terms of the PPA, the Central Commission does not have the jurisdiction to adjudicate the claims of the Petitioner, and therefore, may not even refer the present dispute to arbitration.

4. In rebuttal, the learned counsel for the Petitioner submitted that this Commission does have the jurisdiction, citing the judgment of the Hon'ble Supreme Court in the Energy Watchdog case. He further submitted that at present, a decision is required to be taken as to whether this Commission will adjudicate the disputes or refer them to arbitration, as mentioned in the PPA. He pointed out that the generating station of the Petitioner has a composite scheme for the supply of power to more than one state, and, APTEL vide its judgment dated 31.10.2018, upheld the Central Commission's jurisdiction to adjudicate the disputes between the parties inter se for composite scheme, and the same was affirmed by the Hon'ble Supreme Court vide its order dated 3.12.2018, therefore, in accordance with clause 14 of the PPA, this Commission is appropriate Commission for resolving the dispute between the parties. He also referred to the previous proceedings



in the Commission where the matter had been argued in detail on 'merits' as well as on 'jurisdiction' and requested the Commission to take a decision, as the matter had been pending for long.

5. The learned senior counsel for the Respondent clarified that he is neither expressly agreeing nor denying the reference to arbitration, and he is only submitting his views on the law as applicable.

6. At the request of the parties, the Commission permitted the filing of the written submissions (along with the judgments relied upon) on or before **13.6.2025**, after serving a copy to the other party. Subject to this, and based on the consent of the parties, an order is reserved on the issue of 'arbitrability' of the matter.

By order of the Commission

**Sd/-
(B. Sreekumar)
Joint Chief (Law)**

