

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
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**CASE No. 125 of 2015 and CASE No. 15 of 2016**

**Dated: 15 December, 2016**

**CORAM: Shri. Azeez M. Khan, Member  
Shri. Deepak Lad, Member**

1. In the matter of Petition filed by Indo Rama Synthetics Limited under Section 86(1)(f) of the Electricity Act, 2003 for willful neglect / default in payment of the License fee by the Distribution Licensee to the Generating Company in accordance with the agreed terms under the proposal dated 08.03.2010 made by the Generating Company and the Letter of Intent dated 08.03.2010 issued by the Distribution Licensee.

- (Case No. 125 of 2015)

Indo Rama Synthetics Limited (IRSL)

.....Petitioner

V/s.

Reliance Infrastructure Limited (Distribution) (RInfra-D).

.....Respondent

**And**

2. In the matter of Petition filed by Reliance Infrastructure Limited (Distribution) under Section 86(1)(f) of the Electricity Act, 2003 for claiming compensation from the Generating Company for breach of Letter of Intent dated 08th March 2010 issued by the Petitioner for supply of 37 MW for the Period 1 April 2010 to 30 June 2010.

- (Case No. 15 of 2016)

Reliance Infrastructure Limited (Distribution) (RInfra-D).

.....Petitioner

V/s.

Indo Rama Synthetics Limited (IRSL)

.....Respondent

**Appearance:**

For IRSL:

Adv. Shri Dinesh Pednekar

Adv. Ms. A.A. Mujawar

For RInfra-D:

Adv. Ms. Anjali Chandurkar

Shri. Ghanshyam Thakker (Rep)

**Daily Order**

Heard the Advocates of the Petitioner and the Respondent.

Advocate of IRSL (Ms.Mujawar) stated that Senior Counsel could not be present due to some difficulty and requested adjournment of the hearing and that another short date be given. The Commission did not agree to an adjournment and observed that no such request had been received prior to the hearing, which had been fixed with adequate notice and for which the other party was present. The Commission noted that IRSL had already filed its detailed say. The Commission would proceed with the matter and the Advocate present for IRSL may present her case. IRSL may file any further written submission, if any, in a week's time. (Adv. Shri Pednekar for IRSL also appeared subsequently during the hearing.)

Advocate of RInfra-D summarized the background of both the matters. She pointed out that, even in the High Court case initiated by IRSL, details had not been given of the 'unavoidable circumstances' that prevented IRSL from continuing power supply to RInfra-D. Following the Commission's Daily Order dated 4 October, 2016, certain additional details have been provided. From IRSL's submissions, it will be seen that IRSL had entered into contracts with other parties for supply of power exceeding its generation capacity, and at a higher sale price than had been contracted for with RInfra-D. The details provided also do not indicate any occurrence in the nature of a Force Majeure.

RInfra-D stated that, in this context, its response to the data furnished by IRSL may be seen. IRSL has stated that 15-minute time block data of the actual power generation from 1 April to 30 June, 2010 is not available since records were not required to be maintained in that manner in 2010 as per the system of monthly reconciliation prevailing then. In fact, however, Clause 9 of the Scheduling and Despatch Code (formulated in pursuance of the State Grid Code Regulations, 2006) applicable at that time requires the Generator to provide day-ahead availability in 15 minute time blocks in MW and MU, failing which it would not be possible to schedule the power. The fact that this data has not been provided shows that IRSL wants to conceal facts that might be adverse to it. The reconciliation provided by IRSL differs from the data of the Maharashtra State Load Despatch Centre (MSLDC).

RInfra-D stated further that, according to Annexure II of IRSL's submission, power was sold to several other parties (GMR, Tata, IEX, etc.) between April and June, 2010. The Table shows that sale to RInfra-D fell to zero, while power was being sold to others. Moreover, the LoIs with the other parties were entered into by IRSL after it had committed power to RInfra-D and for overlapping periods. Analysis of the data furnished by IRSL also shows that it sold a considerable quantum of power during 8.00 to 24.00 hrs., as against its earlier claim that it only sold power in the night off-peak hours from 0.00 to 08.00 hrs. Moreover, IRSL had over-contracted its available power, i.e. 102 MW in April, 2010 against its generation capacity of 71 MW, and at much higher rates than with RInfra-D. RInfra-D also pointed out that, although the maximum load details were sought in the Commission's Daily Order, Annexure 7 of IRSL's submission provides no further details, and power supply had increased to 48 MW after 12 April when it stopped supplying RInfra-D. The averments made by IRSL regarding boiler issues, etc. are not substantiated with any details. On the other hand, RInfra-D has given details of the alternative procurement that it had to resort to, and was entitled to claim the difference

between the higher purchase cost it incurred as a result and the lower procurement rate contracted for with IRSL.

IRSL stated that, in the context of the reference in the Daily Order to the option of arbitration provided in Section 86(1)(f), it had approached RInfra-D, but the latter preferred to let the Commission decide the dispute. In fact, since this is a contractual dispute simplicitor, it would be appropriate to refer it to arbitration. RInfra-D responded that the Daily Order only asked the parties to give their views regarding the option of arbitration. Ultimately, since the matter impacts the consumer tariff, the Commission itself is the appropriate forum for such adjudication.

IRSL submitted that it had given all the details required by the Daily Order. As regards 15-minute time block data, IRSL stated that, in 2010, 15-minute data was not recorded but prepared manually later. Monthly reconciliation had been provided. The Monthly Energy Balance is at Exh. 3. There is always a slight deviation between the actual and the scheduled injection. As regards contracts with other parties, the agreement with TPC, for instance, was entered into subsequent to the surrender of the LoI with RInfra-D.

The Commission observed that, at the last hearing, IRSL had stated that the sale of power to other parties was not on a RTC basis, but the facts seem otherwise. IRSL drew attention to Annexure 2 of its written submission and contended that the supply to others was only intermittent. After 12 April, when the boiler was in order, the RInfra-D arrangement had already been surrendered. Even if some amount were due as compensation, RInfra-D has accepted that it would be the net amount after adjusting the amount due to IRSL from it. The payment due for the power procured by RInfra-D from IRSL is an admitted amount and has to be paid immediately. Under the contract, IRSL was to be supplied +/- 20% of the Open Access quantum permitted by MSLDC, i.e., 80% of the 22 MW (which was also the minimum of the range contracted for) permitted by MSLDC. The Commission observed that IRSL had, however, applied to MSLDC only for 22 MW and not for the full quantum of 37 MW.

IRSL stated that RInfra-D had made 2 alternative prayers regarding compensation, viz. under the terms of the contract as mentioned above, or to the extent of the additional cost incurred on alternative power procurement. However, no evidence has been provided regarding such alternative procurement. The compensation claimed under the contractual terms was against the maximum quantum contracted for and not the actual quantum required. With reference to pages 70-72 of RInfra-D's Petition in Case No. 15 of 2016, the Merit Order Despatch stack details are the only basis put forward by RInfra-D for the differential amount claim (for the alternative procurement) of several crores of rupees. In May and June, 2010, RInfra-D had surplus power which it sold at higher rates of Rs. 8.23 Rs/kWh and 6.67 Rs/kWh, respectively.

IRSL stated further that its technical generation difficulties were known at the time of entering into the contract. Moreover, RInfra-D has admitted that 22 MW was supplied. No communication was received from RInfra-D to the effect that it had wanted the entire quantum of 37 MW, as against which it was supplied only 22 MW. In spite of this, RInfra-D is claiming

compensation for the difference at Rs.1 per unit. Any deficit in power suffered by RInfra-D was only in respect of April, 2010, since it had surplus power thereafter as will be seen from the analysis of the details provided and referred to earlier.

IRSL submitted that the Commission may pass a preliminary decree on the basis of RInfra-D's admissions. As regards compensation claimed on the basis of the purported differential procurement rate, this requires documents and proof from RInfra-D, and may be referred to arbitration since all the details would need to be gone into. A penalty cannot be by way of a blanket order. The claimant must show the loss incurred by it. IRSL cited the provisions of the Indian Contract Act with regard to Liquidated Damages. Moreover, there was no provision for Liquidated Damages in the LoI. IRSL also cited the Supreme Court Judgment in the ONGC Case that the damage to be compensated has to be proved, and also circulated the Judgment in the Kailashnath Case. Thus, RInfra-D must place the actual record of procurement in April, 2010. For the remaining months, RInfra-D was in surplus.

In response, RInfra-D stated that it is not liable to pay any amount since it has a larger claim on IRSL. IRSL had told RInfra-D that the boiler maintenance issue would subsist until 12 April, and that it would provide the full quantum of power thereafter. In its reply to IRSL dated 12 April (Exh. C), RInfra-D accordingly sought scheduling of the full quantum. However, on 13 April, IRSL entered into a contract with another party instead. As regards the differential quantum, the Sale of Goods Act may be referred to, and the Commission may set off the payment to be made to IRSL against the compensation that IRSL owes RInfra-D. RInfra-D also drew attention to para. 43 of the Kailashnath Judgment.

RInfra-D also submitted that the contractual provision of compensation of 100 paise/kWh for shortfall in supply or off-take of power operates on a monthly basis and is in the nature of a take-or-pay clause. There was an obligation not to deviate more than +/- 20% of the contracted capacity, which took into account the captive nature of the Generator. If that contractual compensation is agreed to, RInfra-D is not pressing for compensation to the extent of the differential cost it had incurred on procurement from elsewhere, which was an alternative claim by RInfra-D.

Drawing attention to Annexure 2 of IRSL's additional submission, RInfra-D stated that surrenders from other parties in the last week of April were not because of any difficulty but in order for IRSL to sell power at a higher rate on the Exchange. Page 22 also shows that GMR surrendered the LoI and IRSL claimed compensation. No technical issue was cited.

IRSL referred to para. 43 of the Kailashnath Judgment. The amount set out in the LoI is in the nature of a penalty, to the maximum extent of 100 paise/kWh.

IRSL stated that, as regards its approaching the High Court in 2015, IRSL is now before the Commission on those issues. It may be noted that RInfra-D filed its counter-claim against IRSL only after that Case was filed.

The Commission gave one week for the parties to file additional written submissions, if any.

**The Case is reserved for Order.**

**Sd/-  
(Deepak Lad)  
Member**

**Sd/-  
(Azeez M. Khan)  
Member**