

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 138 of 2015

Date: 10 January, 2018

CORAM: Shri. Anand B. Kulkarni, Chairperson
Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

In the matter of

Petition filed by RattanIndia Power Limited under Section 86 (1) (f) of the Electricity Act, 2003 read with Articles 4, 8 and 11 of the Power Purchase Agreements dated 22.04.2010 and 05.06.2010 for adjudication of claims and seeking directions to MSEDCL to open Letter of Credit and to make payment of Rs.558 crore outstanding as on 17.10.2015 towards supply of electricity.

RattanIndia Power Limited (RPL) ...Petitioner
V/s
Maharashtra State Electricity Distribution Company Limited (MSEDCL) ...Respondent

Advocate for the Petitioner: Shri. Vishrov Mukerjee

Advocate for the Respondent: Shri. Ashish Singh

Daily Order

1. Heard the Advocate of Petitioner and Respondent.
2. Advocate of RPL stated that:
 - a. MSEDCL has not even paid undisputed amounts
 - b. The issues which are still pending to be resolved are
 - i. Amount deducted by MSEDCL on account of alleged over injection from FY 2013-14 till July 2016
 - ii. Capacity Charge claims for deemed generation
 - iii. Contract Year penalty for CY 2013-14, CY 2014-15 & CY 2015-16
 - iv. Pass through of incremental cost of coal procured from alternate source pursuant to CCEA decision of Rs. 287 crore
 - v. Withholding of amounts towards Fuel Adjustment Cost (FAC).
 - vi. Change in Law claims – from June 2013 to April 2014.

- vii. Non-consideration of Change in Law claims for auxiliary consumption paid earlier till Oct-2015 and recovery thereto.
 - viii. Late Payment Surcharge (LPS)
- c. MSEDCL has kept pending the payments on account of the cases pending before the Commission on one hand, and on the other it has not paid the amounts which have been decided by the Commission.
 - d. Differences on the LPS are due to application of different rates as RPL is claiming LPS at the rate provided in the PPA i.e. at SBAR rate plus 2%, However MSEDCL is calculating the LPS based on Base Rate/MCLR. MSEDCL stated in its submission that it has filed an appeal in Appellate Tribunal for Electricity (ATE) against the Commission's Order dated 16.11.2017 in Case No.24 of 2017.
 - e. In respect of the incremental cost of coal procured from alternate source pursuant to CCEA decision, RPL stated that the Commission has heard the remand matter in Case No.154 of 2013 and the Order is awaited. RPL will follow the Commission's Order in that matter.
 - f. In respect of the amounts withheld by MSEDCL towards Fuel Adjustment Cost (FAC), RPL will act according to the Commission's Order in Case No. 46 of 2017 for which the Order is reserved by the Commission.
 - g. The issue of methodology to determine the CIL claims considering auxiliary consumption has been heard by the Commission in Case No.123 of 2017 and the Order is reserved by the Commission.
 - h. MSEDCL has deducted amounts from RPL's energy bills on account of over injection of power during the period from FY 2013-14 till July 2016. In this respect RPL stated that MSEDCL in its submission has mentioned that these deductions are in line with the provisions of PPA. In fact, there is no provision in the PPA for such deductions on account of over injection of power.
 - i. On a query of the Commission, RPL clarified that the over injection is due to the generation by RPL beyond the declared capacity for respective period.
- 3. The Commission asked whether MSEDCL has complied with the Order in Case No. 24 of 2017, which states that SBAR is applicable on LPS as per the PPA, considering that ATE has not yet stayed it.
 - 4. MSEDCL stated that:
 - a. Some issues are resolved and some are pending as the issues involved are sub-judice at various forums and may be dealt with only after the Orders/Judgments.

- b. In respect of the amounts withheld towards FAC, MSEDCL is waiting for the Commission's Order in Case No. 46 of 2017.
 - c. RPL is adding various contractual issues in the proceedings of the present matter. RPL had raised for particular disputes of amounts in the present Petition. RPL wants to now adjudicate the issues such as Contract Year Penalty, deductions of Capacity Charges and over injection of power, etc.
 - d. MSEDCL has to borrow funds to make payments, considering its financial condition. It may be noted that total outstanding now is about Rs.112 crore. Basically the Petition was filed for recovery of dues in 2015 and not for adjudicating the contractual issues. However, the Petitioner is adding various contractual issues in the instant Petition through its additional submission, which is incorrect.
5. In counter, RPL stated that

At the previous hearing, the Commission directed both parties to re-concile the disputed amounts issue-wise. The issues regarding deduction done based on the contract year penalty, over injection, Capacity Charges claims for deemed generation, etc have arisen during the reconciliation process.

The Case is reserved for Order.

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

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

**Sd/-
(Anand B. Kulkarni)
Chairperson**