

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Date: 11 January 2022

**CORAM: Sanjay Kumar, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member**

Miscellaneous Application Dairy No.139 of 2021 in Case No.226 of 2020

Application Lloyds Metals & Energy Ltd. for amendment of petition in Case No. 226 of 2020.

M/s Lloyds Metals & Energy Ltd. (LMEL) : Applicant
M/s Kreate Energy (I) Pvt. Ltd. (KEPL) : Respondent No.1
M/s The Tata Power Co. Ltd (Distribution) (TPC-D) : Respondent No.2

Case No. 226 of 2020

Petition of Lloyds Metals & Energy Ltd. against Kreate Energy (I) Pvt. Ltd. Seeking adjudication of a dispute arising from a Power Purchase Agreement

M/s Lloyds Metals & Energy Ltd. (LMEL) : Petitioner
M/s Kreate Energy (I) Pvt. Ltd. (KEPL) : Respondent No.1
M/s The Tata Power Co. Ltd (Distribution) (TPC-D) : Impleaded Respondent No.2

Case No. 136 of 2021

Petition of Kreate Energy (I) Pvt. Ltd. inter alia under section 86(1)(f) of the Electricity Act, 2003 read with other applicable provisions of Law, seeking adjudication of a dispute arising from a Power Purchase Agreement.

M/s Kreate Energy (I) Pvt. Ltd. (KEPL) : Petitioner
M/s The Tata Power Co. Ltd (Distribution) (TPC-D) : Respondent No.1
M/s Lloyds Metals & Energy Ltd. (LMEL) : Respondent No.2

Appearance:

For the LMEL : Shri. Abhishek Khare (Adv.)
For the KEPL : Shri. Adarsh Tripathi (Adv.)
For the TPC-D : Shri Venkatesh (Adv)

Daily Order

Heard the advocates of the Petitioners and Respondents.

Advocate of LMEL submitted that subsequent to the Commission's Order dated 6 August 2021 allowing impleadment of TPC-D as necessary party, it has filed an application seeking permission to allow amendment in Original Petition in Case No.226 of 2020. In amended Petition it has categorically mentioned TPC-D as a Respondent and damages have been claimed from Respondent KEPL and TPC-D.

Advocate of TPC-D objected such amendment for claiming relief against TPC-D. No relief/prayer was sought against TPC-D in original Petition in Case No.226 of 2020 as TPC-D has no privity of contract signed between LMEL and KEPL. The Commission has allowed impleadment of TPC-D only for assisting in factual aspects of the matter which does not mean relief can be sought against TPC-D. Further, the contract between LMEL, KEPL and TPC-D are not a back-to back contracts.

Advocate of KEPL supported amendment application of LMEL and stated that TPC-D is a necessary party in the present proceedings. The present transaction is composite in nature that contains a flavor of tripartite transaction as the agreements are back-to-back. Further, KEPL acts as a facilitator in both the agreements, it neither generates nor consumes the electricity. In such a situation, KEPL cannot be saddled with the claims being made by the LMEL. If at all any party has defaulted, then it is TPC-D. In present proceedings it is necessary to determine whether TPC-D has invoked Force Majeure clause correctly or not. He further stated that to overcome such technical objection of TPC-D, it has filed separate Petition in Case No.136 of 2021 seeking relief against TPC-D. He requested that said Case No.136 of 2021 be heard along with Case No.226 of 2020.

The Commission notes that in its Order dated 6 August 2021, allowing impleadment of TPC-D in Case No. 226 of 2020 has ruled as follows:

*“15. In view of above, although there is no relief/prayer sought against TPC in Case No.226 of 2020, the main ground of seeking relief is alleged illegal invocation of Force Majeure by TPC to KEPL which in turn issued force majeure notice which is under challenge in the main case. Further, it is also an agreed position that TPC has been referred with respect to various factual background in Case No. 226 of 2020. **Asking KEPL to file similar case against TPC would result in multiplicity of proceedings on the same cause of action between same set of parties.** Therefore, the Commission in the interest of justice and for expediently settling the matter is of the considered opinion that no effective order can be passed in absence of*

submissions of TPC on these factual aspects/ contentions. Hence, TPC needs to be impleaded in the Case No. 226 of 2020.”

Thus, avoiding multiplicity of proceeding was one of the objectives allowing impleadment of TPC-D. But now KEPL has already filed separate Petition in Case No. 136 of 2021 making TPC-D and LMEL as Respondent no. 1 & 2. In that Petition, KEPL has prayed for TPC-D to pay compensation amount, if applicable, to the LMEL directly or through KEPL. In reply to said Petition, TPC-D has stated that as Case No. 226 of 2020 is pending wherein TPC-D is made respondent, there is no separate cause of action for KEPL to file this Petition.

Considering above factual aspects and the fact that purported compensation claim is arising out of same cause of action, the Commission is of the opinion that these two cases i.e. Case No. 226 of 2020 and Case No. 136 of 2021 need to be heard together. As far as issue of allowing amendment of Petition in Case No. 226 of 2020 to include prayer seeking relief against TPC-D is concerned, same becomes irrelevant as similar relief has been sought in Case No. 136 of 2021 which is now to be heard together with Case No. 226 of 2020. Therefore, without going into technicality of allowing amendment application at this stage, the Commission decides to finally hear these matters together on merit of the respective claims. This is consistent with Hon’ble Supreme Court Judgment dated 18 October 2012 in Civil Appeal No. 7524 of 2012 wherein it is held as follows:

“We have considered the argument of the learned senior counsel but have not felt impressed. Since, one of the objectives of the new enactment is to ensure expeditious adjudication of the disputes raised by the parties, there is no warrant for entertaining preliminary/interlocutory objections raised by either party and decide the same by long-drawn hearing and by recording lengthy orders. The State Commission and the Tribunal should, while deciding the main matter consider all objections including the one relating to their jurisdiction to entertain the matter. Any attempt by the parties to delay adjudication of the dispute deserves to be deprecated and the State Commission and the Tribunal are not expected to waste their time in dealing with objections of different hues.”

Accordingly, the Commission will hear Case No. 226 of 2020 and Case No. 136 of 2021 together on merits and decide accordingly. Purpose of filing application for amendment of Petition in Case No. 226 of 2020 is served by hearing these matters together and hence at this stage the Commission is not giving ruling on amendment application. Same will be dealt with appropriately in final order. This is being done to expeditiously resolve the dispute between parties (which is filed in November 2020 and listed 8 occasions for hearing) without wasting any further time on technical objections.

Next date of combined hearing in Case No. 226 of 2020 and Case No.136 of 2021 will be intimated by the Secretariat of the Commission.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairman