

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum

Shri S.K.Chaturvedi, Chairperson

Smt. Neerja Mathur, Member

Petition No. 167/2015

Date of Order: 11.12.2015

In the matter of

Petition under Section 86(1)(f) of the Electricity Act, 2003 for recovery under Power Purchase Agreement dated 10.01.1997 amended from time to time between Reliance Infrastructure Limited and Government of Goa through Electricity Department, Goa.

And in the matter of

Reliance Infrastructure Limited, a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 'H' Block, 1st Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai 400 719 and Plant Office at Goa Power Station, Opp. Sancoale Industrial Estate, Zuarinagar, Goa – 403 726.

...Petitioner

Versus

Government of Goa through Department of Electricity, Goa, having its office at Vidyut Bhawan, Panaji, Goa
... Respondent

Present

For Petitioner

1. Shri Surendra Khot, Sr. V.P. (Legal)- Reliance Infrastructure
2. Shri Shantanu Dolas, Manager, Reliance Infrastructure
3. Shri Hasan Murtaza, Advocate – Reliance Infrastructure
4. Shri J.J. Bhatt, Sr. Advocate, Reliance Infrastructure
5. Ms. Anjali Chandurkar, Advocate, Reliance Infrastructure
6. Ms. Malavika Prasad, Advocate, Reliance Infrastructure

For Respondent

1. Shri Deepak S. Bhajekar, Chief Electrical Engineer, Electricity Department, Goa
2. Shri N.N. Reddy, Superintending Engineer, Electricity Department, Goa
3. Shri Sandip Dessai, Asstt. Engineer, Electricity Department, Goa
4. Shri Angelo Rodujuo, Junior Engineer, Electricity Department, Goa
5. Shri S.S. Rebello, Advocate, State of Goa

ORDER

1. This Petition is filed by M/s Reliance Infrastructure Ltd., the Petitioner, under section 86(1)(f) of the Electricity Act, 2003 for recovery of dues payable by the Electricity Department, Goa, the Respondent to the Petitioner under the Power Purchase Agreement (hereinafter referred to as the 'PPA') dated 10.01.1997 as amended from time to time between the Petitioner and the Respondent. In the Petition, the Petitioner has prayed the Commission:
 - a. To order and declare that it is entitled to interest on delayed payment of Invoices for the period January, 2011 to March 2013 being a sum of Rs 36,71,68,882/- as per Particulars of Claim annexed at Annexure 'A' hereto with further interest thereon computed as per Clause 11.8.4 of the Power Purchase Agreement dated 10th January, 1997 as amended from time to time till, payment or realization;
 - b. To order and declare that it is entitled to an amount of Rs 8,87,00,002/- for the month of April, 2013 and an amount of Rs 13,09,80,388/- for the month of May 2013, towards Invoices raised for the aforesaid period along interest thereon being a sum of Rs 3,95,10,615/- as per Particulars of Claim annexed at Annexure 'E' hereto with further interest thereon computed as per Clause 11.8.4 of the Power Purchase Agreement dated 10th January, 1997 as amended from time to time till, payment or realization;
 - c. To order and declare that it is entitled to an amount of Rs 119,15,22,016/- for the period of June 2013 to 13th August 2014, towards Invoices raised for the aforesaid period along interest thereon being a sum of Rs 67,98,93,174/- as per Particulars of Claim annexed at Annexure 'F' hereto with further interest thereon computed as per Clause 11.8.4 of the Power Purchase Agreement dated 10th January 1997 as amended from time to time till, payment of realization;
 - d. For the costs of this petition;
 - e. For such further and other Orders as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the present case.
2. The Petition was received in the Commission on 19.05.2015 and was found generally as per the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Conduct of Business) Regulations, 2009 and the Electricity Act, 2003. The Commission admitted the Petition on 03.06.2015.

3. The Petition was heard by the Commission on 29.06.2015, 06.10.2015 and 27.10.2015 respectively. ED Goa, the Respondent instead of filing reply to the Petition submitted an Application vide affidavit dated 27.08.2015 under Section 8 of the Arbitration and Conciliation Act for appointment of an Arbitrator in terms of the Power Purchase Agreement dated 10.01.1997. In the Application, the Respondent has prayed for referring the dispute for adjudication and redressal to the Arbitral Tribunal in terms of clause 19 of the PPA; and any other Order that may be passed by this Court in the interest of justice and equity. Clause 19 of the PPA is reproduced as under:

**Clause 19*

Arbitration of Disputes

19.1 Where any dispute is not resolved as provided for in clause 18.2, then the following provisions shall apply :-

- (a) such Dispute shall be submitted to arbitration at the request of either party upon written notice to that effect to the other party and be finally determined under the Arbitration Ordinance or the Law relating to arbitration for the time being in force. The rights and obligations of the parties shall remain effective during the arbitration proceedings.*
- (b) the place of arbitration shall be Panaji, Goa;*
- (c) the language of arbitration shall be English;*
- (d) any Dispute submitted to arbitration shall be considered by three arbitrators, two of whom shall be nominated, one by RSPCL, and one by GOG, if within 30 days of the receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the appointment of the first party of the arbitrator it has appointed, the first party may apply for the appointment of the second arbitrator in accordance with the Arbitration Ordinance or the Law relating to arbitration for the time being in force. The third arbitrator (who will act as Chairman) will be nominated by the two existing arbitrators or failing such nomination within 30 days of the appointment of the second arbitrators, shall be appointed in accordance with the Arbitration Ordinance or the law relating to arbitration for the time being in force".*

- 4.1. The Petitioner submitted its reply to the Application filed by the Respondent ED Goa under Section 8 of the Arbitration and Conciliation Act vide affidavit dated 14.09.2015. The Petitioner has, in its reply, submitted that the Electricity Act, 2003 being a special Act overrides any other Act in regard to the adjudication of disputes between the licensees and the generating Companies. Section 86 of the Act which provides for the functions of the State Commission includes adjudication of disputes between the licensee and the generating Company including reference of such dispute to arbitration, which is specifically covered under the provisions of Section 86(1)(f) of the Act.
- 4.2. The Petitioner has relied upon various judgments- of the Supreme Court and the Appellate Tribunal for Electricity (APTEL) stating that it is settled law, viz. Gujrat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. 2008 (4) SCC 755, Global Energy Pvt. Ltd., Vs. Karnataka Electricity Regulatory Commission Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 145 of 2013, M/s Lanco Kondapalli Power Ltd., Hyderabad Vs. Andhra Pradesh Power Co-ordination Committee Vidyut Soudha Hyderabad & Ors Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal No. 128 and 129 of 2011. The Petitioner submitted that the Application be rejected and the Respondent should be directed to file its reply to the Petition.
- 5.1. The Commission, after going through the relevant provisions of law, the documents placed before them, hearing the representatives for the parties and application of mind on the facts and circumstances came to the conclusion that the application under Section 8 of the Arbitration and Conciliation Act is to be disposed off before directing the Respondent - ED, Goa to file the reply to the main Petition.
- 5.2. Accordingly, the Petition was scheduled for hearing on 11.12.2015 for arguments on the application under Section 8 of the Arbitration and Conciliation Act.
- 6.1. During the hearing, the Petitioner submitted that the Arbitration clause in the PPA can no longer operate; and, the powers to decide the disputes are vested only with the Commission by virtue of Section 86(1)(f) of Act. Section 86(1)(f) of the Act reads as under:
- ... "86. *Function of the State Commission*
 (1)... *The State Commission shall discharge the following functions, namely: -*
 (a)-(e) ...
 (f) *"adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration".*

- 6.2. The Petitioner further submitted that it is a well settled legal position that the disputes relating to monetary claims can be adjudicated upon by the Commission and the Commission can direct payment of amounts. Further that the claims made by them run into more than Rs. 200 crores and the correspondence between the parties shows that there is dispute between the parties and that Section 86(1)(f) specifically empowers the Commission to adjudicate upon the disputes between the Licensee and Generating Company "and to refer any dispute for Arbitration".
- 6.4. During the hearing, representatives of both the Parties conveyed their agreement to refer the dispute to the Sole Arbitration of Hon'ble Mr. Justice B.P. Singh, Judge of the Hon'ble Supreme Court (Retd.) to expedite the decision of the dispute. Both the parties have no objection to the said appointment. The Respondent has suggested that the place of arbitration shall be at Goa, to which the Petitioner has agreed.
- 6.5. In the circumstances and in exercise of the powers conferred upon the Commission under Section 86(1)(f) of the Act, the Commission refers the dispute to the Sole Arbitration of Hon'ble Mr. Justice B.P. Singh, Judge of the Hon'ble Supreme Court(Retd.).
7. In view of the above, the Petition and the Application stand disposed off.

Sd/-
(Neerja Mathur)
Member, JERC

Certified Copy

(Keerti Tewari)

Sd/-
(S.K. Chaturvedi)
Chairman, JERC