

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

**Quorum**

Shri M.K. Goel, Chairperson  
Smt. Neerja Mathur, Member

**Review Petition No. 236/2017**

**Date of Hearing: 22.06.2017**

**Date of Order: 10.07.2017**

**In the matter of:**

Review Petition under Section 94 of the Electricity Act, 2003 read with Regulation 70 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Conduct of Business) Regulations, 2009

**And in the matter of:**

1. The Electricity Department,  
Rep. by its Superintending Engineer,  
A&N Administration, Vidyut Bhavan,  
Port Blair – 744 101.
2. The Chief Secretary,  
A&N Administration, Secretariat,  
Port Blair, Andaman & Nicobar Islands.

**.... Review Petitioners**

**Vs**

M/s Suryachakra Power Corporation Limited,  
Suryachakra House, Plot No. 304,-L-III, Road No. 78,  
Film Nagar, Jubilee Hills,  
Hyderabad 500 096.

**.... Respondent**

**Present**

**For the Petitioner**

1. Shri U.K. Paul, Superintending Engineer, Electricity Department
2. Shri Arvind Tewari, Consultant Electricity Department, A&N
3. Ms. Ruchi Sindhwani, Advocate
4. Ms. Megha Bharara, Advocate

ORDER

The Review Petitioners through this Review Petition sought the review of the impugned Order dated 13.01.2017 in Petition No. 174/2015 on the following issues:-

1. Interest on Working Capital
2. Interest on delayed payment

The Commission conducted a pre-admission hearing on 22.06.2017 and heard the Learned Counsel for the Review Petitioners.

The Learned Counsel submitted that the Commission while deciding the issue of interest on Working Capital and interest on delayed payment has omitted to consider some material facts, relevant documents placed on record and the relevant provision of the Power Purchase Agreement (PPA).

The Learned Counsel further submitted that the Commission in its earlier Order dated 03.07.2013 had directed that the interest on Working Capital is payable on actual basis on furnishing documentary proof of payment to the bank. The said direction of the Commission was not challenged by the Respondent in its subsequent appeals filed before the Appellate Tribunal for Electricity or before the Hon'ble Supreme Court of India. Thus, the Review Petitioner is required to make the payment of interest on Working Capital only upon furnishing of documentary proof of payment to the bank by the Respondent.

The Learned Counsel further submitted that it was apparent from the Respondent's own documents submitted before the Commission that no payment of interest on Working Capital was made to the bank by the Respondent since March, 2014 onwards. The Respondent had only furnished the interest rate charged by the bank and had not submitted any document showing payment of interest to the bank.

The Learned Counsel further submitted that the Commission has omitted to notice these material facts and documents placed on record and had erroneously allowed interest on Working Capital to the Respondent even for the period beyond March, 2014 whereas the Respondent has not submitted any proof of making any payment of interest on Working Capital to the bank.

The Learned Counsel further submitted that error on the part of the Commission is apparent on the face of the record and warrants review of the impugned Order dated 13.01.2017.

In respect of the second issue, the Learned Counsel submitted that Clause 8.6 of the PPA on delayed payments provides the following:

*"If any amount due hereunder from one party (the "Payer") to another party (the "Payee") is not paid when due, that shall be due and payable to the payee interest at the rate which is one half percent (0.5%) above the Cash Credit rate, from and including the date on which such payment was due to but excluding the date on which such payment is paid in full with interest. All such interest shall accrued from day to day and shall be calculated on the basis of a 365 day year, compounded monthly and paid on demand."*

The Learned Counsel submitted that in accordance with Clause 8.6 of the PPA, the Commission in its Order dated 03.07.2013 had specifically directed that the payment of arrears to the Petitioner would be made along with the interest on delayed payments as per terms of the PPA (as followed by the Respondent on the recovery from the Petitioner in the past). Similarly, recoveries from the Petitioner by the Respondent would also be made along with interest as per terms of the PPA.

The Learned Counsel further submitted that the Commission, in contravention to the Clause 8.6 of the PPA has allowed interest on delayed payment to the Review Petitioner at normal Cash Credit / short terms rate, while the Respondent was allowed the interest on delayed payment at penal rate, which is 0.5% above the Cash Credit interest. This is also in violation of the direction in the Commission's Order dated 03.07.2013 which was upheld by the APTEL and the Hon'ble Supreme Court of India.

The Learned Counsel further submitted that this error is apparent on the face of the record and warrants review of the impugned Order dated 13.01.2017.

The Commission has considered the submissions made by the Review Petitioner. The Commission has also examined the records placed before it along with relevant provisions of the Electricity Act, 2003 and Rules and Regulations made thereunder, Clause 8.6 of the PPA, impugned Order dated 13.01.2017 and its Order dated 03.07.2013.

The Commission's Power to review its own Orders flow from Section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a Civil Court under Order 47, Rule 1 of the Code of Civil Procedure (CPC).

Section 94 of the Electricity Act, 2003 provides that:

*"The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-*

*.... (f) reviewing its decisions, directions and orders;"*

Order 47, Rule 2 of CPC mandate that a Court of review may allow a review on three specific grounds which are as under

- a. If there are mistakes or errors apparent on the face of the record, or
- b. On discovery of new and important matter or evidence which, after due diligence was not within knowledge of the aggrieved person or evidence could not be produced at the time of making the order, or
- c. For any other sufficient reasons which are analogous to the above two grounds.

Under Order 47, Rule 1, CPC Order / judgment may be opened to review inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions. However, an error must be one which speaks for itself and is glaring and difficult to be ignored. A review Petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored. The law has made clear the distinction between what is an erroneous decision and an error apparent on the face of the record.

The Commission has also examined Schedule 1(d) of PPA which provides that interest on Working Capital is allowed strictly based on determination of norm based working capital. The norms for determination of fuel cost, secondary fuel oil, O&M expenses, maintenance spares & receivables are clearly specified in the PPA and are quoted below:-

*“(f) Interest on Working Capital shall cover:*

- (i) fuel cost for one month and reasonable fuel stocks as actually maintained but limited to fifteen days for pit head stations and thirty days for non pit-head stations, calculated on normative plant load factor basis;*
- (ii) sixty days stock of secondary fuel oil, calculated on normative plant load factor basis;*
- (iii) operation and maintenance expenses (cash) for one month;*
- (iv) maintenance spares at actual subject to a maximum of one per cent of the capital cost but not exceeding one year's requirement less value of one fifth of initial spares already capitalized; and*

(v) *receivables equivalent to two months' average billing for sale of electricity calculated on normative plant load factor basis."*

The Commission has revisited Section 7.1 of the impugned Order dated 13.01.2017 which clearly indicates that the Working Capital amount has been calculated based on the relevant provisions of the PPA. The Working Capital amount is based on the norms specified in the PPA. Subsequently, interest on Working Capital allowable under the PPA is also worked out from the norm based Working Capital amount.

Section 7.2 of the impugned Order dated 13.01.2017 indicates that the interest on Working Capital has been worked out by considering all documentary proofs placed on record regarding the Respondent's Working Capital facilities. It also indicates that the Commission has taking due cognizance of its earlier order dated 03.01.2017 while calculating the interest.

In view of the above, it is clear that the Commission has determined the interest on Working Capital in accordance with the provisions of the PPA. It has also taken into consideration all relevant documentary proof placed on record and the documents furnished subsequently as demanded by the Commission or voluntarily, by both the parties involved and its earlier Order dated 03.07.2013. Accordingly, the Commission is not inclined to accept the contention of the Review Petitioner that it has not considered some material facts, relevant documents available on record and relevant provisions of PPA. These contentions are factually and legally untenable and lack merit. The Review Petitioner has failed to make any case for admission of the Review Petition on this issue.

As regards interest on delayed payments, the Commission has examined its direction in the Order dated 03.07.2013 which provides that the payment of arrears to the Petitioner will be made along with the interest on delayed payments as per terms of the PPA (as followed by the Respondent on the recovery from the Petitioner in the past). Similarly, recoveries from the Petitioner by the Respondent would also be made along with interest as per terms of the PPA.

Article 8.6 of PPA on late payments provides that:

*"If any amount due hereunder from one Party (the "Payer") to another Party (the "Payee) is not paid when due, there shall be due and payable to the payee interest at the rate which is one half percent (0.5%) above the Cash Credit Rate from and including the date on which such payment was due to but excluding the date on which such payment is paid in full with interest. All such interest shall accrued from day to day and shall be calculated on the basis of a 365 day year, compound monthly, and paid on demand."*

Para 19.14 of the impugned Order dated 13.01.2017 indicates that the Commission has passed on the benefit of interest at Cash Credit Rate to the Respondent.

It provides that the months where there is under payment by the ED (A&N), the benefit has gone to SPCL (+ ve interest) at penal rate of interest and in months of over payment by ED (A&N) , credit of interest has gone to ED (A&N) (- ve interest) at normal cash credit / short term rate. The Commission is of the view that the subject matter under question is the payments made by ED (A&N), (the "payer") to the SPCL, (the "Payee"). Therefore, any delay in such payments can only be on the behalf of ED (A&N) the "Payer". However, the 'excess payments' made by ED (A&N) cannot be construed as 'delayed payments' to ED (A&N) by SPCL, as is being made to appear by ED (A&N) in their Review Petition.

In view of the above, it is clear that the Commission has determined the interest on delayed payments in accordance with the provisions of PPA. It has also taken into consideration all relevant documentary proofs available on record. The interest on excess payment / recoveries has been determined on the basis of the Commission's earlier Order dated 03.07.2013 wherein interest was allowed on recoveries as per terms of the PPA.

It is clear from the above that the contention of the Review Petitioners that the Commission has determined the interest on delayed payments without considering material facts, relevant documents placed on record and relevant provisions of PPA is factually and legally incorrect and also lacks merit. The Commission is of the considered view that the Petitioner has failed to make any case for admission of the Review Petition on the issue of interest on Working Capital and interest on delayed payments. In fact the Commission has considered all the material facts including the facts presented in the Review Petition and appropriately decided the issue.

The Commission opines that the issues which were raised by the Review Petitioner were decided by the Commission based upon the provisions of the Electricity Act, 2003, provisions of the PPA and its Order dated 03.07.2013.

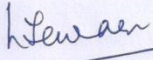
Accordingly, the Review Petition is liable to be dismissed.

Ordered accordingly.

Sd/-  
(NEERJA MATHUR)  
MEMBER

Sd/-  
(M.K. GOEL)  
CHAIRPERSON

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(KEERTI TEWARI)  
SECRETARY