

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

Coram

Dr. V.K. Garg, Chairperson

Sh. S.K.Chaturvedi, Member

Petition No. 89/2012

In the matter of

Petition for fixation of completed / actual capital cost of project and Tariff of the project of the petitioner- a Power Generating Company under Regulations 3(2)(a), 3(4), 12 and 36 of the Joint Electricity Regulatory Commission for the State of Goa and Union Territories (Terms and Conditions for determination of Tariff) Regulations, 2009 read with Sections 62(1) (a) and 63 of the Electricity Act, 2003.

And in the matter of

M/s Suryachakra Power Corporation Ltd.

Suryachakra House,

Plot No. 304-L-III, Road No.78,

Film Nagar, Jubilee Hills,

Hyderabad- 500096

Vs.

1. Electricity Department,
Rep. by its Superintending Engineer,
Port Blair, Andaman & Nicobar Islands.

2. Chief Secretary,
Andaman & Nicobar Administration Secretariat,
Port Blair, Andaman & Nicobar Islands.

Present for petitioner

1. Dr. S.M. Manepalli, MD, SPCL.
2. Shri K. Vijay Kumar, Executive Director, SPCL.

3. Shri K.J. Joseph, Liaison Officer, SPCL.
4. Shri Mukul Kakau, Advisor, SPCL.
5. Shri Rohit Rao. N, Advocate, SPCL.

Present for respondents

1. Shri M. Jagannathan, AE, ED- Andaman & Nicobar Islands.
2. Shri Arvind Tewari, Consultant, ED- Andaman & Nicobar Islands.
3. Shri M.D.S. Murthy, Consultant, ED- Andaman & Nicobar Islands.
4. Shri R. Balasubramanian, Advocate, ED- Andaman & Nicobar Islands.

Order

Date 17.04.2013

1. The Commission vide order dated 15.01.2013 observed as under:-

Quote

The Commission once again emphasized the guiding objective of maintaining uninterrupted power supply in the Island in the interest of the consumers especially beginning February, keeping in mind the ensuing examination period. The Commission made it evidently clear that it is the joint obligation of both the petitioner and the respondent.

Unquote

2. The Commission vide order dated 18.02.2013 directed the petitioner as under:-

Quote

1. *Petitioner will maintain uninterrupted power supply.*
2. *The petitioner will make an application to the respondent for releasing an advance of Rs. 10 crores in three installments. First installment being placed in a special account and Letter of Credit (LC) be opened on the contractor M/s. Caterpillar to initiate the work immediately and furnish a work schedule, completion date for each of the 4 generators. The revolving LC can be divided into three parts – first part i.e. 50% or Rs. 5 crores to be released at the placement of order – second part 25% or Rs. 2.5 crores to be released after the overhaul of the 2 engines and the balance 25% after the overhaul of the last 2 engines.*

Unquote

3. The Commission vide same order dated 18.02.2013 directed the respondent as under:-

Quote

- i. To obtain the approval of competent authority within one week from the application of the petitioner.*
- ii. To open the LC on the contractor M/s. Caterpillar through a special account.*
- iii. 50% payable on the placement of order, 25% payable on completion of overhaul of 2 engines and the balance 25% payable after the overhaul of the last 2 engines.*

Unquote

4. The Commission in the order dated 12.03.2013 gave following directions:-

Quote

- i. The petitioner will furnish a revolving bank guarantee of Rs. 5 Crs. to the respondents in such a way that the Bank Guarantee amount will get reduced gradually by the amount recovery of advance by the respondents from the monthly tariff.*
- ii. The respondents shall release the amount as per the order dated 18.02.2013 of the Commission immediately on receipt of the Bank Guarantee but not later than one week of furnishing the Bank Guarantee.*

Unquote

5. The Commission in the order dated 22.03.2013 again issued following directions:-

Quote

- i. operationalise the order of the Commission dated 18.02.2013 in letter and spirit by 31.03.2013 for overhaul of the generators to provide uninterrupted power supply to the public;*
- ii. ensure settlement of long pending arrears issue in terms of the orders dated 18.02.2013 and 12.03.2013.*

Unquote

6. The Commission in the order dated 2.04.2013 observed that respondent expressed their requirement of the Bank Guarantee as per the Govt. of India Financial Rules and orders of the Commission. The petitioner has expressed difficulty in producing the requisite Bank Guarantee. The

Commission further observed that the petitioner will relook as to whether it is economical for them to go for loan or Bank Guarantee.

7. The petitioner has already submitted that they are unable to produce requisite Bank Guarantee and further submitted that SBI is willing to advance a loan to the petitioner. The parties in compliance of the order dated 02.04.2013 filed statement/ information on 15th & 16th April, 2013 in Annexure "A" & "B" of the order dated 12.03.2013.
8. The Commission has heard the representatives of the parties at length and has gone through the file carefully and thoroughly.
9. The Commission observed that there is a huge gap between the statements submitted by both the parties in Annexure "A" & "B".
10. Looking at the picture of amount claimed by the petitioner and recovery from the petitioner arrived at by the respondent, there is again a wide difference which calls for a thorough analysis & examination of the related documents.
11. For the understanding of the gap, the Commission asked for an invoice raised for any one month submitted by the petitioner and the payment order passed by the respondent thereon. Since the gap is again wide and could not be logically explained by the respondent, the Commission considered it appropriate and directed the respondent to submit a statement containing month-wise bills for the period from April 2003 to January 2013; invoice submitted, net payment, orders passed thereof, the recoveries made from each bill and a consolidated statement of the amount recovered, number of days for which such recovered sums were held by the respondent and interest due thereon for delayed payments as per PPA provisions. While this statement should have been prepared and submitted to the Commission in response to the orders dated 17.12.2012 and 18.02.2013 alongwith the "Due and Drawn" statement with supporting evidence and the details mentioned above but the same were not submitted. The respondent further wanted 10 days more time to submit the required detailed statement with all supporting documents/ vouchers, the Commission allowed the respondent to submit the same by 29th April, 2013.
12. The Commission observed that the fixed charges payable in the tariff namely O&M expenses, Depreciation, Debt servicing, Return on Equity and incentive are linked to project cost, which is yet to be finalized. There are also disputes with regard to fuel consumption (Heat Rate, Evaporation losses, ambient temperature) consumption of lube oil and working capital composition. The

Commission also observed that both the parties submitted on various occasions different statements giving varying figures of “Due and Drawn” without any supporting documents.

13. The project cost based on which fixed charges for the monthly tariff are to be calculated, also has undergone changes during almost the last ten years from the date of commissioning of the plant. Both the parties are relying on PPA provisions and CEA orders; however, there is a difference of opinion with regard to interpretation of the same and the effective date of operation of these provisions/ orders. There was also difference of opinion with regard to Interest rate payable on term loans and working capital.
14. The respondent was effecting recoveries from the monthly bills of M/s Suryachakra Power Corporation Ltd. in case of any excess payment as per respondent’s calculations/ admission, they were charging interest on recoveries as per PPA provisions, where as the petitioner complained that the respondent was not following the same provision/formula/practice for settlement of arrears of the petitioner. The Commission observed that the respondent made the payment of arrears to the petitioner; by virtue of the payment of these elements of tariff, the respondent has acknowledged that the amount was due to the petitioner and as such the petitioner was also entitled for interest on delayed payments as in the case of recoveries by the respondent from the petitioner.
15. The Commission has observed that the issue of finalization of completed cost of the project of the petitioner was discussed /examined on different occasions during the last ten years by different agencies: (a few meetings/discussions held are listed below)
 - (i) CEA clarifications dated 19.08.2003/03.04.2004/29.04.2006/22.02.2008;
 - (ii) Meeting taken by Member (Thermal), CEA on 25.04.2005
 - (iii) Meeting held in the office of AS (NM), Ministry of Home Affairs, Govt. of India on 17.07.2008.
 - (iv) Karnataka Power Corporation Ltd. (KPCL) during April 2005 and April 2006;
 - (v) Central Electricity Authority (CEA) during March, 2008, October, 2010, May, 2011, March, 2012; and
 - (vi) TANGEDCO consultancy team visited Port Blair and discussed with both the parties during June, 2011; gave first report in Nov., 2011;
 - (vii) CEA held meeting in Dec., 2011 and Feb., 2012 regarding TANGEDCO first report and suggested reexamination by TANGEDCO on certain issues;
 - (viii) TANGEDCO reiterated their stand in June, 2012.

(Both KPCL and TANGEDCO were appointed by respondent as consultants), but no final decision was taken by A&N Administration so far on the reports given by their own consultants/ technical authority of GOI namely CEA.

16. In view of the above facts, the Commission suggested during the hearing that both the parties may suggest the name of three experts of their choice so that the issue may be referred to one of the experts to analyze, examine and submit the report to the Commission. The Commission also suggested that the expert to be nominated must have expertise in the field of power generation, tariff fixation, regulation framework, project implementation and Project Finance.
17. Both the parties left the matter to the discretion of the Commission. The Commission suggested the names of two experts namely Shri A.A. Khan, Ex- CMD, Power Finance Corporation, Ex- Member, APTEL and Shri H.L. Bajaj, Ex- Director (Commercial) NTPC, Ex- Chairman, CEA and Ex- Member, APTEL. The Commission would seek the consent of the experts depending on the availability and acceptance of the assignment. The fees/expenses are to be equally shared by the petitioner and respondent, for which both the parties agreed during the hearing. The “terms of reference” of the assignment is enclosed in the Annexure. The expert may be requested to submit the report within a period of 6-8 weeks from the date of the mandate letter.
18. This order may be read alongwith the previous orders issued by the Commission on the Petition no. 89/2012.
19. The matter is scheduled for hearing on 14.06.2013.

Sd/-
(S.K.Chaturvedi)
Member

Sd/-
(Dr. V.K. Garg)
Chairperson

Certified Copy

Sd/-
(R.K. Malik)
Secretary

TERMS OF REFERENCE

Broad terms of reference:

Issues to be examined and final recommendation to be given by the expert:

- Capital cost of the project
- Issue relating to liquidated damages - - recoverability if any from the petitioner by the respondent
- Issue relating to foreign exchange for rupee funding in terms of prevalent exchange rate regime during the period 1995 to 2003 and consequential admissibility of exchange rate variations in the tariff.
- All tariff parameters which flow from the capital cost of the project
- Interest rate for debt servicing and interest on working capital.
- Operational parameters as per PPA/ addendum to PPA/ CEA decision which forms part of tariff.
- Payment/ recovery of amounts due, but not paid, withheld, denied, if any from the date they become due.
- Admissibility of interest on delay payments.
- Any other issue connected with finalization of project cost and determination of tariff payable to the petitioner.

All the components of capital cost, operational parameters and tariff elements as specified above are to be examined, analyzed and interpreted as per the provisions of Power Purchase Agreement (PPA) signed between M/s Suryachakra Power Corporation Ltd. and Andaman & Nicobar Administration as well as the various reports of CEA and consultant appointed by the A&N Administration.