

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 162/MP/2020

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 read with Regulations 20 and 21 of the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 seeking appointment of sole arbitrator for adjudication of disputes between the parties herein in terms of Clause 3.13(b) of the Agreement dated 31.10.2014.

Date of Hearing : 30.7.2021

Coram : Shri P. K. Pujari, Chairperson
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Shree Cement Limited (SCL)

Respondents : Vedanta Limited (Vedanta) and Anr.

Parties Present : Shri Kumar Mihir, Advocate, SCL
Shri Hemant Singh, Advocate, Vedanta
Shri Lakshyajit Singh Bagdwal, Advocate, Vedanta
Shri Harsha Peechara, Advocate, TSSPDCL

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking appointment of a sole arbitrator for adjudication or to adjudicate the disputes and differences itself that have arisen under the agreement between the Petitioner and the Vedanta Limited (Respondent No.1). Learned counsel mainly submitted the following:

(a) The Petitioner is an inter-State trading licensee and had entered into a back-to-back agreement with Respondent No.1 to supply of 300 MW to Respondent No. 2, Southern Power Distribution Company of Telangana Ltd. ('TSSPDCL') for the period from 29.5.2015 to 26.5.2016. As per the Power Purchase Agreement ('PPA') dated 31.10.2014 entered into with Respondent No.1, PoC injection charges upto delivery point were required to be borne by the generator i.e. Respondent No.1, whereas as per the PPA dated 29.10.2014 entered into with TSSPDCL, the PoC withdrawal charges were to be borne by TSSPDCL.

(b) However, when the Petitioner raised its claims toward PoC charges on the Respondent No.1, it refused to pay by stating that as per the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010 (in short, the '2010 Sharing Regulations') read with Third Amendment of 2015, TSSPDCL was liable to pay 100% of PoC charges. As per the 3rd Amendment to 2010 Sharing

Regulations, the PoC injection charges had been merged into PoC withdrawal charges in respect of withdrawing DICs.

(c) Since the Petitioner was not being paid the PoC charges, it approached Telangana State Electricity Regulatory Commission ('TSERC') through Original Petition No.8 of 2017. TSERC in its order dated 1.11.2018, *inter alia*, observed that TSSPDCL was only liable to pay 50% of the PoC charges. However, the balance 50% charges had to be paid by the Petitioner with a liberty to collect such amount from the generator. With regard to adjudication of the dispute between the Petitioner and Respondent No.1, TSERC, considering the objection of Respondent No.1, observed that TSERC had no jurisdiction to implement provisions of the PPA dated 31.10.2014 entered into between the Petitioner and Respondent No.1 since any dispute under the PPA is triable only in the courts at New Delhi.

(d) Thereafter, the Petitioner had repeatedly requested the Respondent No.1 to comply with its liability as per the PPA dated 31.10.2014. However, since the Respondent No. 1 failed to accept its liability to pay 50% of dues, the Petitioner issued Notice of Invocation of Arbitration as per Clause 3.3. of the PPA, which was again denied by the Respondent No.1.

(e) Accordingly, the Petitioner filed Arbitration Petition No. 788/2019 before the Hon'ble Delhi High Court under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a sole arbitrator for resolving the dispute between the parties. During the course of hearing, the learned senior counsel for the Respondent No.1 raised a preliminary objection on maintainability of the Petition in view of the judgment of Hon'ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v Essar Power Ltd. [(2008) 4 SCC 755] and submitted that CERC is the appropriate Commission for appointment of arbitrator. In view of the aforesaid submissions, as recorded by the Hon'ble Delhi High Court in its order dated 4.12.2019, the Petitioner withdrew its application before the Hon'ble Delhi High Court and has filed the present Petition.

(f) Surprisingly, Respondent No.1 has again objected to the maintainability of the present Petition before this Commission claiming lack of jurisdiction. The contentions of the Respondent No.1 that the present dispute involved is a commercial dispute between the generating company and trading licensee and that it does not fall within Section 79(1)(a) to (d) of the Act are completely misplaced and are against its own statement made before the Hon'ble Delhi High Court and as recorded in order dated 4.12.2019.

(g) The dispute has arisen in terms of back-to-back arrangement entered into between parties for inter-State supply. Since the generating station of the Petitioner had composite scheme of generation and supply in more than one State (being located in Orissa and supplying power to TSSPDCL in Telangana) at the relevant point of time, this Commission has the jurisdiction to regulate the tariff of such project under Section 79(1)(b) of the Act and to adjudicate the dispute arisen therein under Section 79(1)(f) of the Act. Also, the issue of liability to pay PoC charges in terms of the 2010 Sharing

Regulations is clearly part of mandate of this Commission under Section 79(1)(c) and 79(1)(d), which provides powers to this Commission to regulate the inter-State transmission of electricity and to determine the tariff for the same.

(h) Also, under Section 79(1)(f) of the Act, the Commission has power to adjudicate the dispute involving generating company or transmission licensee in terms of Section 79(1)(a) to (d) of the Act. The word used is 'involving' a generating company or transmission licensee for a case to be brought before the Commission for adjudication under Section 79(1)(f) of the Act. In other words, if one of the parties to the dispute is a generating company or transmission licensee and the dispute can be relatable to any of the functions under Section 79(1)(a) to (d), the case for adjudication of such dispute shall lie before the Commission. In this regard, reliance was placed on the order of the Commission dated 11.10.2017 in Petition No. 95/MP/2017 (Welspun Energy Pvt. Ltd. v SECI).

3. Learned counsel for the Respondent No.2, TSSPDCL submitted that the TSERC vide its order dated 1.11.2018 has clearly observed that even after the merger of PoC injection charges and withdrawal charges in terms of 3rd Amendment to the 2010 Sharing Regulations, the liability of TSSPDCL was only towards payment of 50% of total PoC charges as PoC withdrawal charge. The aforesaid order passed by TSERC has attained finality as no appeal was preferred by the Petitioner . Accordingly, the learned counsel submitted that in view of the above and taking into account the fact that no relief has been sought by the Petitioner against TSSPDCL, TSSPDCL may be discharged from the proceedings of the present Petition.

4. Learned counsel for the Respondent No.1 submitted that the dispute involved in the present case does not fall within the ambit of Section 79(1)(a) to (d) of the Act and consequently, this Commission does not have the jurisdiction to adjudicate the dispute under Section 79(1)(f) of the Act. Section 79(1)(a) deals with regulation of tariff of generating company owned or controlled by the Central Government, which clearly does not apply to the present case. Section 79(1)(c) pertains to regulate inter-State transmission of electricity whereas 79(1)(d) deals with determination of inter-State transmission of electricity, both of which do not apply in the present case as the dispute is not qua any open access issue or for determination of tariff. As regards Section 79(1)(b) of the Act, which deals with 'regulation of tariff' of a generating company which has a composite scheme for generation and sale of electricity in more than one State, the dispute does not involve the issue of tariff being determined or regulated qua generating company having the composite scheme. Learned counsel added that the outcome of dispute does not have any bearing on annual revenue requirement/tariff of any licensee and the dispute involved is a private dispute between the generating company and a trading licensee. Hence, Section 79(1)(b) of the Act is also not applicable in the present case. Learned counsel submitted that the appropriate Commission in the present case is Orissa Electricity Regulatory Commission. As regards the statement made before the Hon'ble Delhi High Court, learned counsel submitted that by stand of party/consent of party, jurisdiction cannot be conferred to any authority. It was also submitted that such statement was based on the wrongful interpretation of the law. However, there is no finding on the aspect of jurisdiction therein, which has to be decided in terms of the law.

5. After hearing the learned counsels for the parties, the Commission reserved order on the maintainability of the Petition with regard to jurisdiction of this commission.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**