



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.No.36 of 2021

Dated 01.08.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

M/s L.B.Kunjir
Pune Nagar, Kalyani Nagar,
Raheja Woods Pelican Building Wing B 107,
Pune Maharashtra – 411006

... Petitioner

AND

Southern Power Distribution Company of Telangana Limited,
H.No.6-1-50, 5th Floor, Mint Compound,
Hyderabad – 500 063.

... Respondent

The petition came up for hearing on 15.09.2021, 28.10.2021, 22.11.2021, 13.12.2021, 03.01.2022, 31.01.2022 and 11.04.2022. Sri V. N. Bohra, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondent have appeared through video conference on 15.09.2021, 28.10.2021, 22.11.2021, 31.01.2022 and physically present on 11.04.2022. Sri Uma Shankar, Advocate representing Sri V. N. Bohra, Advocate for petitioner and Sri M. Eshwar Das, DE/IPC for respondent are present on 13.12.2021, Sri Uma Shankar, Advocate representing Sri V. N. Bohra, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondent are present on 03.01.2022. The matter having been heard through video conference on 15.09.2021, 28.10.2021, 22.11.2021 and physically on 13.12.2021, 03.01.2022, 31.01.2022 and 11.04.2022 and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner has filed a petition on 30.07.2021 under Section 86(1)(f) of the Electricity Act, 2003 (Act, 2003) seeking for immediate payment of over-due principal amount and allowing late payment surcharge (LPS) from respondent towards the charges for the solar energy delivered.

2. The averments mentioned in the petition are as below.
 - a. It is stated that the petitioner is a partnership firm, incorporated under the Partnership Act. The respondent is Southern Power Distribution Company of Telangana Limited (TSSPDCL) a distribution company of Telangana State.
 - b. It is stated that apart from its regular business the petitioner is also engaged in the business of developing and operating solar energy generation projects, by utilizing clean technology which is eco-friendly and environment friendly, as such petitioner is a solar power developer. It has set up the solar power plant of 2 MW capacity at Hoti-B Village, Zaheerabad Mandal, Medak District and the entire electricity generated there is sold to respondent. The brief details of the Power Purchase Agreement (PPA) executed with respondent is as under;
(SOLAR POWER PROJECT)
PPA for 2 MW capacity at Hoti-B Village, Zaheerabad Mandal in Medak District
SOLAR PPA No. NCE 0175/2014 DATED 19.12.2014
At solar park Hoti connected to 33/132 kV Zaheerabad Pooling SS, having a separate metering at project switchyard.
 - c. It is stated that in addition to the payments which have been made belatedly, there are substantial sums of money due under Invoices raised which are as yet outstanding. The payment of the invoice amounts together with the interest thereon is also due and payable. Apart from LPS, the respondent is overlooking even payment of principal too. The payment of the electricity is being made to the petitioner, every month by TSSPDCL.
 - d. It is stated that by virtue of the agreed term no 5.2 (Article 5 'Billing and Payment') provisions of the PPA No NCE 0175 / 2014 dated 19.12.2014, it is crystal clear term that any payment made beyond the due date of payment, DISCOM shall pay interest at prevailing SBI Bank Rate.

- e. It is stated that as such the duly executed terms as defined in the PPA pertaining to petitioner are binding in nature and can't be overlooked by the respondent. The respondents are supposed to follow the very wordings of the same clause and are duty bound to release the payment of interest on such delay on regular basis, but they are regularly overlooking and ignoring the said agreed term of the PPA, which is proved case of financial in-discipline and the powers to check such irregularity at last lies with the Commission only under the provisions of the Act, 2003. By virtue of the agreement executed with the petitioner, the respondent has a contractual obligations to pay the outstanding bill amount, within stipulated days from the date of receipt of monthly energy bills, for the project as defined in the PPA.
- f. It is stated that the cause of action for getting the principal and delay interest both is accruing day by day, every month on regular intervals which is never time barred and it is a continuing breach on the part of the respondent, which they are not paying the LPS, as per the terms of the PPA. That even after sending several requests, reminders, acknowledged by the respondent and even after the personal visit of the petitioner's staff members and representatives, the respondent overlooked the regular time bound payment as promised in a disciplined manner and has overlooked the agreed terms of the PPA, which is a valid enforceable contract having a binding force in law and well within the limitation too.
- g. It is stated that the present outstanding of principal and interest thereon is furnished in a separate sheet annexed with this petition in a tabulated format here under for kind consideration. That the respondent has failed and neglected to clear the outstanding dues. Principal and LPS that is principal Rs. 1,35,46,285/- and the DPS / LPS Rs. 1,01,58,425/- as such a total amount of Rs. 2,37,04,710/- is outstanding from the respondent, for which this petition is preferred before the Commission.
- h. It is stated that the petitioner sent his staff members, made telephonic requests visited personally and even by sending the written communications on regular interval and demanded for release the LPS / DPS on different dates before approaching the Commission but all in vain.
- i. It is stated that neither the payment on such delayed tenure was ever paid nor the communications were replied positively nor the satisfactory assurance was

ever given, then feeling remedy less, this petition is humbly preferred, invoking the jurisdiction of the Commission for direction to the respondents to release the payment of principal amount of overdue invoices and interest on the delayed tenure, which is the legal right of the petitioner under the terms of the PPA and the powers to pass a direction to release such payment, only lies with the Commission.

- j. It is stated that it is trite law that a contract is required to be interpreted based on the plain language of the terms, coupled with extrinsic evidence reflecting the intention of the parties and their conduct. The delay in making such payment cannot be described as situation beyond control of the respondents or bad financial condition. They are getting the regular payment from the consumers to whom they are selling the electricity, but the respondents have failed to pay amounts due to the petitioner and continue to overlook and violate the terms of the PPA.
- k. It is stated that the clause defined in the PPA is having a binding force in law too. The respondents are supposed to follow the very wordings of the same clause and are duty bound to release the payment of interest on such delay on regular basis, but they are regularly overlooking and ignoring the said agreed term of the PPA, which is proved case of financial indiscipline and the powers to check such irregularity at last lies with the Commission only. The entire financial cycle of the petitioner also disturbed by such non-release of the dues to the petitioner.
- l. It is stated that the respondent have thrown away ignored and neglected the personal request, communications and personal meetings and overlooked the binding terms of the PPA. Surprisingly the respondent is earning from its customers by selling the electricity, but on the contrary they intentionally defaulted in releasing the payments of the petitioner, which proves financial indiscipline on the part of the respondent. The entire business cycle of the petitioner has considerably got disturbed for such illegal and unethical acts of the respondent causing extreme financial hardship to the petitioner and also affecting smooth running and operation of these solar plant already installed. Hence, feeling remedy less, the petitioner herein is left with no recourse but to invoke the jurisdiction of the Commission for redressal of its grievances by filing this petition under the Act, 2003.

- m. It is stated that the Commission in its order dated 06.03.2020 with respect to payment of LPS for delayed payment, in the matter of O. P. No. 34 of 2019 '*M/s JSW Power Trading Company Ltd. Vs Southern Power Distribution Company of Telangana Limited*' (DISCOM) has fairly allowed the petition and allowed the case of the petitioner if it is within the limitation.
- n. It is stated that with respect to payment of LPS for delayed payment, it is noteworthy that the Appellate Tribunal for Electricity in its judgment dated 05.08.2010 passed in '*Ispat Industries Ltd. Vs. MERC*', Appeal Nos. 70 & 110 of 2008, has held that a person deprived of its legitimate payment should be compensated through interest. The relevant portion of the said judgment of the Appellate Tribunal for Electricity is reproduced below:
- "31. *A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for such a deprivation through interest. In an action by way of restitution, it is the duty of the court to give full and complete relief to the party by ordering for interest as well.*"
- o. It is stated that the present issue of LPS, has also been lawfully settled by Hon'ble APTEL in its judgment in '*Chairman, TNEB & Anr. Vs. Indian Wind Power Association and Ors*' in Appeal No.11 of 2012 dated 17.04.2012. The relevant paragraphs are extracted hereunder:
- "It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.*
- In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied the loans can be serviced long with the promised return of investment.*
- Hence our conclusion is as follows:*
- 'The wind power generators are entitled for payment of interest on delayed payment made by the appellant for the purchase of the power from the generators'.*

Therefore all Wind Generators are entitled to interest on delayed payment @1.25% per month for every month's delay from the due date. We are providing a 1.5 month time limit for payment and any delay beyond that will have to be made with interest @1.25% per month on daily basis."

- p. It is stated that Hon'ble Supreme court in the matter of [2014] 3 Supreme 141 / [2014] 2 JLJR (SC) 248 '*T.N. Generation and Distribution Corporation Limited Vs. PPN Power Generation Company Private Limited*' has also validly settled and correctly held that the appellant cannot dictate that the State Commission ought to have referred the dispute to arbitration. Further, the Hon'ble Supreme Court of India in '*T.N. Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited*', (2014) 11 SCC 53, has held as under:

"73. *With regard to the issue raised about the interest on late payment, APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the FPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in Central Bank of India v. Ravindra [(2002) 1 SCC 3671. In this judgment it has been held as follows: (SCC p. 394, para 3 7)*

"37. The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd. [1947 390: (1947) 1 All ER 469 (HL)] (AC at p.400: All ER at p.472 E-F)* is that:

... .. it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation;'

the money due to the creditor was not paid, or, in other words, 'was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation, whether the compensation was liquidated under an agreement or statute:"

- q. It is stated that on 10 Aug 2016 the MERC in the matter of '*M/s. Hindustan Zinc Limited Vs. Maharashtra State Electricity Distribution Company Limited*' case no 150/2015 has fairly settled this issue and settled the law in favour of the petitioner and directed the respondent MSEDCL to pay the late payment surcharge due to HZL as per section 11.04 of the EPA within 30 days. Thereafter, interest will be payable to HZL at 1.25% per month on any surcharge amount remaining to be paid.
- r. It is stated that since there is regular breach of the terms of payment by the respondent which are defined in the PPA executed and by not releasing the payment as per agreed terms is allowing a fresh limitation every month and present outstanding for which this petition is filed and jurisdiction is invoked of the Commission, which is well within the limitation of 3 years.
3. Therefore, the petitioner has sought the following prayer in the petition for consideration.
- a. Direct the respondents to release principal and LPS i.e., principal Rs.1,35,46,285/- and the DPS/LPS Rs.1,01,58,425/- as such a total amount of Rs.2,37,04,710/-.
 - b. Direct the respondent to pay the costs of the present petition.
4. The respondent has filed the counter affidavit and averments made therein are extracted below.
- a. It is stated that the petitioner requested to change the bank from Bank of Baroda to Union Bank of India. Whenever the petitioner/generator requests to change the account for payments, the respondents SPDCL has to follow certain procedure before considering the change of bank.
The petitioner / firm / company who seeks change of bank is required to produce the following documents:
 - i. Board Resolution
 - ii. NOC from existing Bank
 - iii. NOC from all Lenders
- The petitioner failed to submit true copy of the board resolution. On 16.10.2020, the representative of the petitioner was orally informed to produce the copy of resolution.

- b. It is stated that as per para-14 of the partnership deed all the 3 partners have to give consent whenever there is correspondence with the respondents, regarding any change in the account, but in the present case the petitioner ignored the said requirement of para 14 of partnership deed. However, considering the request of the petitioner change of bank account is considered based on the bankers NOC besides continuous oral requests for production of the true copy of board resolution and compliance of para- 14 of the partnership deed. Due to non fulfilment of the procedure by the petitioner, payments were kept in abeyance.
- c. It is stated that due to the shortfalls mentioned supra, the respondent / DISCOM has kept the amount payable to the petitioner in abeyance till the change of account maintained with the bank is affected.
- d. It is stated that the respondents have taken cognizance of the request of the petitioner and informed the petitioner to comply with the requirements mentioned supra, but the petitioner did not attend to the said requirements and hence payments could not be made to the petitioner.
- e. It is stated that the statement furnished by the petitioner is as per the calculation made by it. The petitioner has never come forward to reconcile the amount receivable from the respondent and has unilaterally fixed the amount to be paid by the respondent. The respondent stated that the statement furnished by the petitioner is subject to reconciliation and the amount claimed by the petitioner is not as per the calculation arrived at by the respondent/DISCOM. It is the duty of the petitioner to follow due procedure of reconciliation of the account every 6 months. Unless and until reconciliation of the accounts is completed the petitioner cannot contend that the claim made by it is the clear outstanding due.
- f. It is stated that the petitioner instead of complying oral requests made by the respondent / DISCOM regarding submission of necessary documents for change of bank account approached the Commission.
- g. It is stated that the petitioner straight away approached the Commission without exhausting the alternate redressal procedures envisaged in clause 10.4.4 of the PPA. The petitioner failed to follow Article-11 which provides for dispute resolution.
- h. It is stated that the payments could not be made since the process of change in bank account was not completed. There is no fault on the part of the

respondent. The respondent never ignored the request or neglected the personal request of the petitioner. The senior officers of the respondent have been frequently appraising the situation and in fact even though the change of account was in process, energy bill for 2 months was paid considering the financial requirements.

- i. In the light of aforesaid facts and circumstance,
 - i. The respondent prays the Commission to reject the request of DPS / LPS claim as the principal payment was kept in abeyance for want of change in account details to be furnished by the petitioner and there were certain shortfalls on the part of the petitioner. The respondent has put in all efforts to rectify all the shortfalls of the petitioner. There is no delay on the part of the respondent. Hence, the respondent prays the Commission to reject the request of the petitioner in respect of DPS/LPS.
 - ii. The petitioner is not entitled to claim cost of the petition since the petitioner failed to exhaust the alternate remedial measures, such as (a) reconciliation at officer level, (b) redressal as per Article 10.4 of the PPA, dispute resolution.

5. The Commission has heard the parties to the present petition extensively and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 15.09.2021:

“... .. The counsel for the petitioner stated that the matter involves payment of amounts towards generation and it is coming up for the first time. The representative of the respondent stated that the matter may adjourned as the respondent has to file its counter affidavit. In view of the request of the respondent, the matter is adjourned.”

Record of proceedings dated 28.10.2021:

“... .. The counsel for the petitioner stated that the counter affidavit is yet to be filed in the matter. The representative of the respondent stated that he needs further time to file the same. Accordingly, the matter is adjourned.”

Record of proceedings dated 22.11.2021:

“... .. The representative of the respondent sought further time for filing counter affidavit in the matter. He needs at least four weeks time to do so. The counsel

for petitioner stated that he may also be permitted to file rejoinder, if any, by the date of hearing. Accordingly, the respondent is permitted to file counter affidavit on or before 09.12.2021 by sending the same through either email or in physical form to the petitioner. The counsel for petitioner may file the rejoinder, if any, by sending the same through either email or in physical form to the respondent. Accordingly, the matter is adjourned.”

Record of proceedings dated 13.12.2021:

“... ... The advocate representing the counsel for petitioner stated that the matter is coming up for filing of counter affidavit and consequent rejoinder, if any. The counter affidavit is not filed, hence, the matter may be taken up on any other date. The representative of the respondent stated that the regular representative for the respondent is unable to attend the hearing today due to personal inconvenience. Therefore, he sought short adjournment of the matter. Accordingly, the matter is adjourned. The respondent shall file the counter affidavit on or before 20.12.2021 duly serving a copy of the same to the petitioner. The petitioner may file the rejoinder, if any, by 31.12.2021 duly serving a copy of the same to the respondent.”

Record of proceedings dated 03.01.2022:

“... ... The advocate representing the counsel for petitioner stated that the counter affidavit is not yet filed despite granting time. The representative of the respondent has sought further time to file the counter affidavit. The Commission made it clear that the licensee shall file its counter affidavit on or before 17.01.2022 duly serving a copy of it to the counter for petitioner by way of e-mail or in physical form without fail. The counsel for petitioner may filed a rejoinder, if any, on or before the date of hearing duly serving a copy of the same to the respondent through e-mail or in physical form. Accordingly, the matter is adjourned.”

Record of proceedings dated 31.01.2022:

“... ... The counsel for petitioner stated that despite several adjournments, the respondent has not filed its counter affidavit in the matter. The representative of the respondent has stated that due to some technical difficulties, the same could not be filed, but they will do so within a week. The Commission expressed its displeasure and stated that the relief sought is in respect of reimbursement of small amount yet the respondent is not facilitating the same. Having said that

the Commission has imposed cost of Rs.10,000/- for non-filing of counter affidavit. It has been informed that the details of payment of costs will be informed by the office of the Commission. The Commission made it clear that the respondent shall file counter affidavit within 15 days from today and thereafter rejoinder, if any shall be filed expeditiously within 15 days. The parties shall make available the counter affidavit and the rejoinder to the other side well in advance either physically or through email. Therefore, the matter is adjourned.”

Record of proceedings dated 11.04.2022:

“... .. The counsel for petitioner stated that the issue is related to the payment of amounts due to the generator along with late payment surcharge. It is his case that the payment have not been made on the premise that the petitioner has not furnished bank details. The representative of the respondent stated that payments are being made and same are being received by the petitioner. Earlier the petitioner did not receive payments towards energy charges, but subsequently, the petitioner has been receiving the amount in their bank account, yet the earlier payments are due to it. The representative of the respondent stated that payments are made in accordance with PPA and there are no dues to be paid to the petitioner. He opposed any relief towards late payment charges as the petitioner itself has delayed furnishing of details of financial particulars. In view of the submissions made by rival parties, the matter is reserved for orders.”

6. The issue that arises for consideration is whether the petitioner is entitled to relief as claimed by it.

7. The petitioner claimed amounts towards the energy supplied from the 2 MW solar project and non payment of late payment surcharge for the same. The dispute emanated from the situation that the petitioner sought change in designated account and consequential payment towards the changed bank account. However, it is stated by the respondent that the petitioner failed to comply with the requirement sought by the respondent for enabling them to make payment.

8. It is noticed that the petitioner has not placed on record any information along with the petition or as a consequence of the submissions of the respondent that it has

complied with the requirement sought by the respondent. In the absence of the material to support that the requirements have been complied with, the Commission cannot presume or assume that the petitioner has rightfully complied with the requirements before it sought to question inaction of the respondent.

9. It is also noticed that during the course of hearing the representative of the respondent emphatically made it clear that no payments are due and all the payments are being made in accordance with PPA. The claim towards late payment charges cannot be sustained in view of the statement made by the respondent and the absence of material to state that the requirements of licensee have been complied with.

10. Even otherwise the petitioner did not point out as to why payments are held back by the licensee earlier, which fact came to light in the submissions of the licensee. The licensee rightly sought three documents for complying with the change of bank details namely board resolution, NOC from existing bank and NOC from lenders. The only error in the said documents is that the petitioner is a partnership firm and such partnership firm shall not have any board resolution but a resolution of partners.

11. The petitioner sought to rely on an order passed by the Andhra Pradesh Electricity Regulatory Commission in O. P. No. 34 of 2019 between M/s JSW Power Trading Company Limited vs Southern Power Distribution Company of Andhra Pradesh Limited (wrongly quoted as Telangana and passed by this Commission). The said order though involves late payment surcharge but does not arise out of payment to a generator by the DISCOM, on the contrary it is with regard to open access charges and the delayed payment thereof to the trader by the licensee. It is not binding on this Commission and is only of a persuasive value.

12. The petitioner has also referred to the judgements of Hon'ble APTEL in two matters, wherein issue of delayed payment and interest thereon is discussed. Inasmuch as the petitioner did not confront the contention of the licensee with regard to payments being affected and that there are dues at present if any. Also, the petitioner did not reconcile the statement with factual figures as regards payment of LPS for what amount and for what period, despite filing the same as part of the petition, after the licensee came forward with the statement that there are no dues in the matter.

13. The petitioner has also sought to rely on the findings of the Hon'ble Supreme Court in the matter of '*T.N. Generation and Distribution Corporation Limited vs. PPN power Generation Company Private Limited*'. In the absence of rebuttal by the petitioner as to the amounts due subsequent to the hearing the observations made therein would not aid the petitioner in so far as the relief claimed therein. No doubt if the amounts alleged have been paid belatedly contrary to the PPA, the petitioner would be entitled to LPS and interest thereon, but however the record is inconclusive as to the claims except indicating the amount due which now stood paid. The petitioner has filed a detailed statement indicating the amount claimed towards power supplied and amount paid thereof from April 2015 to March 2020 and surprisingly there are no dues towards principal amount but there is delay in payment of bills and as such the interest may be due for the same. Further, in another table the petitioner has shown that there are dues from March 2020 to December 2020 which are not paid according to the petitioner and interest is calculated on such dues. Both the statements are figuring in material papers at page 63 and 62 respectively. A consolidated statement is filed at page 61. Yet this would not support the petitioner to claim relief in the light of the fact that the respondent went on to state that the petitioner is receiving payments at present and there are no dues.

14. The Commission is not inclined to grant relief to the petitioner in view of the statement made by the representative of the respondent as also no rebuttal including material having not being placed by the petitioner to counter the claims made by the respondent in the matter. Accordingly, the present petition fails, and the same stands dismissed. Parties shall bear their own costs.

This order is corrected and signed on this the 1st day of August, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M.D.MANO HAR RAJU)	(T.SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

//CERTIFIED COPY//