WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. WBERC/C-15/992

Date of hearing: 27th June, 2019

Time of hearing: 15.00 hours

Coram:

Shri Sutirtha Bhattacharya, Chairperson
Shri Durgadas Goswami, Member

In the matter of

Order issued by the Hon'ble High Court, Calcutta on 29.01.2019 in respect of the Writ petition no. W.P. No. 2723 (W) of 2018 filed by Indus Towers Limited (ITL) before the Hon'ble High Court at Calcutta with a prayer to inter-alia withdraw, recall, rescind and/or cancel the threat of disconnection notice dated 2nd February, 2018 issued by the West Bengal State Electricity Distribution Company Limited (WBSEDCL).

Between

Indus Towers Limited
Godrej Waterside, 8th floor, Tower – 1
Unit – 801, Plot No. 5, Block – DP, Sector – V
Salt Lake City
Kolkata 700 054. ............... Petitioner

And

West Bengal State Electricity Distribution Company Limited
Vidyut Bhavan
Block DJ, Sector – II
Salt Lake City
Kolkata 700 091 ............... Respondent

Representatives attended:

Indus Towers Limited (ITL) [Petitioner]
1. Sri Shyamal Sarkar, Sr. Advocate, Calcutta High Court,
2. Sri Sauvik Ghosh, Advocate, Calcutta High Court,
FACTS OF THE CASE

A writ petition was filed by Indus Towers Limited (ITL) before the Hon’ble High Court at Calcutta bearing no. W.P. 2723 (W) of 2018 praying for withdrawal of threat of disconnection notice dated 2nd February, 2018 issued by the West Bengal State Electricity Distribution Company Limited (WBSEDCL). The Hon’ble Justice Samapti Chatterjee, J. passed an order dated 29.01.2019 in writ petition 2723 (W) of 2018 in the matter of Indus Towers Limited & Anr. – vs – The State of West Bengal & Ors directing the Regulatory Commission to resolve the issue within 6 weeks from the date of communication of this order to the Commission after giving an opportunity of hearing to the petitioners or their authorized representative and the distribution company or their authorized representative and thereafter communicate the decision to the parties forthwith. Accordingly, the Commission, afforded the parties three hearings so far before the instant hearing. In the last hearing held on 25th April, 2019, the Commission passed the following order on 02.05.2019:

"Upon hearing both the sides, the Commission directs that both the ITL and the WBSEDCL will sit together and reconcile the outstanding dues, if any, payable by either party immediately. After reconciliation, a statement jointly signed by both WBSEDCL and ITL in regard to outstanding dues, shall be submitted to the Commission within the next day of hearing which is scheduled to be held on 27.06.2019 at 14.30 hours at the office of the Commission."
In terms of the direction given by the Commission in its order dated 02.05.2019, a meeting was held on 21st June, 2019 between ITL and WBSEDCL in order to reconcile the outstanding dues, the minutes of which is submitted by WBSEDCL to the Commission vide its letter dated 25.06.2019 before the date of hearing on 27.06.2019.

As directed by the Commission in its order dated 02.05.2019, further hearing was taken on 27th June, 2019 at the office of the Commission.

**SUBMISSION DURING HEARING on 27.06.2019**

A joint submission in writing has been made ON 27.06.2019 by the petitioner (ITL) and the respondent (WBSEDCL) duly signed by the authorized representatives of ITL and WBSEDCL during the hearing, which inter-alia says that:

“During the reconciliation meeting held on 25.06.2019, both ITL and WBSEDCL came to a conclusion to settle the whole issue. In course of deliberation, ITL has stated that they are ready to waive their entire claim of ‘receivable’ being the amount of excess payment, to bring their claim to ‘nil’. In response to that, and considering the fact that the unsettled accounts are basically for LPSC and non-granting of timely payment rebates, WBSEDCL has stated their contention as, if, the Hon’ble WBERC so directs, then the unsettled and disputed receivables as lying in the system for the period from January 2014 to January 2018 arising out of the cascading effect of the old balances comprising LPSC and non-granted timely payment rebates and special rebates, may be withdrawn from the database as well as in the Books of Accounts, through adjustment in order to settle the long pending disputes over this matter once for all and WBSEDCL shall abide by the order of Hon’ble WBERC in this regard. Both the parties are agreed to clear their all pending claims to come to a situation of ‘zero pay out’ for the entire disputed period of January 2014 to January 2018 including the cascading effects thereof, if a suitable order in this regard is passed by the Hon’ble Commission.”
OBSERVATIONS OF THE COMMISSION

The Commission observes that –

1) The root cause of such claim lies in the initial claim of Rs. 5801368.00 as pointed out in the Commission’s order dated 28.03.2019 and its concomitant other charges including LPSC with their cascading effect over the years;

2) Submission on the part of WBSEDCL is non-committal and not straight forward. It is the WBSEDCL which has to say, if they really have any claim remaining still unpaid by ITL. And the Commission has little scope to strike off such a huge amount from the books of accounts of WBSEDCL, all of a sudden;

3) On the contrary, WBSEDCL could not submit sufficient evidence to prove that they really owe such amount from ITL, inspite of specific direction by the Commission on 28.03.2019 and therefore their claim in this regard could not be proved.

4) Moreover, they have raised no objection to the proposal of ITL to settle the dispute with zero pay-out, which ITL submitted in no uncertain terms;

5) Rather, from the joint submissions made by the parties before the Commission it appears that both WBSEDCL and ITL have mutually settled all the issues to come to a situation of ‘zero pay out’ for the entire disputed period of January, 2014 to January, 2018 including the cascading effects thereof, subject to the approval of the Commission.

ORDER

Since the parties have already arrived at a settlement for an amicable resolution of the matter, as is evident from the joint submission dated 27.06.2019, the Commission directs both the petitioner (ITL) and the respondent (WBSEDCL) to conclude the matter as per the joint submission made during the hearing.
The petition is, thus, disposed of without any further direction and let the original copy of mutual settlement dated 27.06.2019 be kept as a part of the case records.

Let a copy of this order be served upon WBSEDCL and ITL.

Sd/-
(DURGADAS GOSWAMI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 11.07.2019

(T. K. MUKHERJEE)
SECRETARY