

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION
WEST BENGAL**

Petition No. OA-417/22-23

Date of hearing: 11th July, 2022

Time of hearing: 14.30 hours

Quorum:

Shri Sutirtha Bhattacharya, Chairperson

Shri Pulak Kumar Tewari, Member

In the matter of

Application under section 86(1)(f) and section 86(1)(b) of the Electricity Act, 2003 read with regulation 2.1.3 (d) of WBERC (Conduct of Business) Regulations for adjudication of disputes and / or withdrawal of the approval of the procurement of 100 MW power in terms of the Power Supply Agreement (PSA) dated 05.01.2011 granted by the Commission vide order dated 15.12.2011.

And

In the matter of

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

Petitioner

And

PTC India Limited
NBCC Tower
15 Bhikaji Camac Place
New Delhi 110 066

Respondent

And

Adhunik Power and Natural Resource Limited
9B, 9th Floor, Hansalaya Building
15 Barakhamba Road
Connaught Place
New Delhi 110 001

Respondent

Representatives attended:

West Bengal State Electricity Distribution Company Limited [(WBSEDCL) (Petitioner)]

1. Sri Amit Kapur, Sr. Advocate,
2. Akshat Jain, Advocate,
3. CE (Regulation),

PTC India Limited [(WBSETCL) (Respondent)]

1. Sri Ravi Kishore, Sr. Advocate

Adhunik Power & Natural Resource Limited [(APNRL) (Respondent)]

1. Sri Deepak Khurana, Sr. Advocate

CASE IN BRIEF

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) applied under sections 86(1) (b) and (f) of the Electricity Act, 2003 seeking adjudication of dispute arisen between WBSEDCL, PTC India Limited (PTC) and Adhunik Power & Natural Resource Limited (APNRL) and / or revocation/rescission of the approval dated 15.12.2011 of the Commission for procurement of 100 MW power from 540 MW Thermal Power Project of Adhunik Power and Natural Resource Limited (APNRL) for a period of 25 years in terms of Power Supply Agreement (PSA) dated 05.01.2011 executed between WBSEDCL and PTC.
- 2.0 In terms of aforesaid PSA dated 05.01.2011 executed between WBSEDCL and PTC, a Power Purchase Agreement (PPA) was executed on back to back basis between PTC and APNRL on 25.03.2011.
- 3.0 WBSEDCL has contended in the petition that, since commencement of power supply on 08.07.2013, PTC/APNRL started demanding energy charges at a higher rate than what was agreed upon in the PSA. In view of above, WBSEDCL has sought for adjudication of the dispute regarding energy charge and / or allow withdrawal of the PSA between WBSEDCL and PTC.

- 4.0 In order to resolve the dispute amongst the parties involved, an e-hearing was held on 29th June, 2022 at 14.30 hours in presence of the representatives of the parties involved in dispute. Upon hearing the parties, the following directions were passed by the Commission.
- a) WBSEDCL, PTC and APNRL shall sit together and explore all avenues to resolve the issues involved. A copy of the minutes of the meeting(s) shall be submitted by the petitioner to the Commission within the next date of hearing;
 - b) WBSEDCL, PTC and APNRL shall also submit their written notes of argument, after exchanging copies thereof amongst themselves, to the Commission within the next date of hearing;
 - c) The next date of hearing is fixed on 11th July, 2022 at 14.30 hours
- 5.0 Accordingly, the e-hearing was held on 11th July, 2022 at 14.30 hours in presence of the representatives of all the parties involved.

SUBMISSION DURING HEARING

- 6.0 The Ld. Senior Advocate, on behalf of PTC, submitted that, as directed by the Commission, the Senior Officers of the parties involved could sit only on Saturday, the 9th July, 2022, to have discussion on the amicable settlement of the issue, in question, and therefore the minutes of the said meeting could not be filed before the Commission serving copy upon other parties. During the discussion certain way forward was achieved and a note was prepared by APNRL for approval of WBSEDCL in the name of 'Proposed settlement agreement / addendum to the PSA' which, inter-alia states as follows:
- a) Under section 64(5) of the Electricity Act, the West Bengal Electricity Regulatory Commission (in short "Commission") shall have the exclusive jurisdiction in all the matters concerning supply of power by APNRL to WBSEDCL through PTC.
 - b) APNRL shall submit a petition before the Commission for approval of tariff under section 62 of the Electricity Act, 2003 with effect from 01.04.2022.

- c) Till the determination of tariff by the Commission, an interim tariff of Rs. 4.80 per KWh shall be payable by WBSEDCL. If the interim tariff is not acceptable to WBSEDCL, the interim tariff too shall be as determined by the Commission. On determination of final tariff, final adjustment shall be made in respect of tariff already paid.
- d) As for balance outstanding amount of Rs. 285.64 crores as on 31.05.2022 against the bills raised by APNRL on WBSEDCL based on three orders issued by CERC in respect of change in law for taxes and duties, all the three parties shall attempt to resolve the differences amicably. If the parties fail to agree on an amicable settlement by 31st July, 2022, the claim calculations made by APNRL along with the supporting documents will be referred to the Commission. Till the time such verification of claim calculations takes place, PTC/APNRL proposed WBSEDCL shall make a payment of Rs. 150 crores on an urgent basis against the claim for change in law for taxes and duties, which will be adjusted against the finally verified amount.
- e) The dispute regarding change in law for coal sources is pending before Hon'ble APTEL for adjudication. Hence, the matter as decided by Hon'ble APTEL / Supreme Court shall be agreeable by all the parties and shall be implemented accordingly.
- f) All parties agree that on adoption of tariff under section 62 and methodology for settlement of old dues (except for change in law linked to change in coal source), all pending cases shall be withdrawn by all the parties.

The Ld. Counsel submitted that excepting two points as mentioned above, viz., interim tariff and payment of Rs. 150.00 crore against outstanding of Rs. 285.64 for change in law for taxes and duties, all other issues have been agreed by all the parties. WBSEDCL has sought for some time to make final comments on the above two issues.

The Ld. Counsel, on behalf of APNRL, submitted that their contentions are reflected in the note of the discussions had between the parties on 9th July, 2022. In fact, the parties involved have come to a decision, in principle. Only the modalities are required to be sorted out. However, upon receipt of the comments from WBSEDCL on the notes of discussion, APNRL shall make further

comments, if any.

The Ld. Counsel, on behalf of WBSEDCL, requested APNRL to send the copy of the note immediately so that they can revert back on the subject by 14th July, 2022. The Ld. Counsel suggested that instead of entering into a settlement agreement or addendum to the PSA, it would be wise to go for an agreement under Rule 23 as the settlement agreement or addendum to the PSA requires more time for execution. However, upon receipt of the note from APNRL, WBSEDCL shall file their reply within 14th July, 2022 to the Commission with service of the copies upon other parties.

ORDER

7.0 In view of above, the Commission directs that –

- d) APNRL shall file the note prepared by them on the discussions held on 9th July, 2022 between the parties involved, before the Commission and serve the copy of the same on other parties immediately;
- e) WBSEDCL shall file their reply on the notes before the Commission within 14th July, 2022 and serve the copy upon other parties;
- f) The next date of hearing is fixed on 20th July, 2022 at 15.30 hours.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 18.07.2022

Sd/-
SECRETARY