

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION
WEST BENGAL**

Petition No. OA-417/22-23

Date of hearing: 20th July, 2022

Time of hearing: 15.30 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,

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, the Commission heard the parties several times, the last one being 11th July, 2022.
- 5.0 During the hearing held on 11th July, 2022, APNRL presented the 'Proposed settlement agreement / addendum to the PSA' based on the direction given by the Commission in its order dated 07.07.2022. The matter in respect of proposed settlement was discussed in detail during the hearing and it revealed that certain way forward was achieved.
- 6.0 Upon hearing, the Commission issued an order dated 18.07.2022 directing that—
- a) 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;
 - b) WBSEDCL shall file their reply on the notes before the Commission within 14th July, 2022 and serve the copy upon other parties;
 - c) The next date of hearing is fixed on 20th July, 2022 at 15.30 hours.
- 7.0 Accordingly, the e-hearing was held on 20th July, 2022 at 15.30 hours when representatives from all the parties were present.
- 8.0 During the hearing, the Ld. Advocate, on behalf of WBSEDCL, submitted the proposed terms of settlement which were agreed by all the parties viz. WBSEDCL, APNRL and PTC to seek disposal of the case, in question. It was agreed that all the parties shall file a joint application in regard to the following terms of settlement:
- a) With effect from 01.04.2022, tariff shall be determined by the Commission under section 62 and 64(5) of the Electricity Act, 2003 in accordance with the WBERC Tariff Regulations as prevalent from time to time in respect of 100 MW power in terms of the PSA dated 05.01.2011 & PPA dated 25.03.2011. Computation of capacity charges, energy charges, incentive, penalty, etc. with respect to normative parameters shall be as per applicable WBERC Regulations.
 - b) Except to the extent modified by the terms of the settlement, all other terms

of the PSA dated 05.01.2011 and PPA dated 25.03.2011 shall remain unmodified.

- c) Till the time tariff is determined by the Commission, APNRL/PTC to supply power to WBSEDCL at an interim tariff of Rs. 4.40 / kWh.
- d) The dispute regarding Change in Law issue related with coal price will be settled on the basis of the outcome of the proceedings before superior courts (i.e., Supreme Court or Appellate Tribunal for Electricity) and both parties agree to abide by the same.
- e) Regarding payment on Change in Law issue related with Tax etc.: -
 - (i) Out of Rs. 119 crores, Rs. 78 crores already paid.
 - (ii) 60% of the balance amount (other than Rs. 119 crores) as calculated based on the orders passed by the CERC in petitions No. 255/MP/2017, 260/MP/2019 and 292/MP/2019, applicable laws, regulations and PSA / PPA terms as agreed and acceptable mutually between the parties shall be paid in 3 monthly instalments (40%, 30% and 30%) starting from August, 2022 after the order of the Commission in the present case. The calculation for the balance amount as per CERC order in petitions no. 255/MP/2017, 260/MP/2019 and 292/MP/2019 shall be finalized within 10 to 12 days of the Commission's order in the instant matter.
 - (iii) For the balance amount of payment on Change in Law issue related with Tax etc. [i.e., (Rs. 119 crores – Rs. 78 Crores) and 40% of amount arrived at under point (b)], the same shall be referred mutually by APNRL & WBSEDCL to a Government agency like REC/PFC/etc. for verification. All parties shall abide by the final report of the said agency and payments will be made/refunded based on the report of the said Government Agency.
 - (iv) The Government Agency shall be finalized by July, 2022 end. Report of Government Agency shall be readied at the earliest and in any event not later than 60 days of the Agency finalization. Payment as finalized by the said Agency shall be released within 90 days of

agency report. Parties undertake to fully cooperate and assist the agency in preparation of the Report.

- f) WBSEDCL, APNRL & PTC agree to withdraw all the pending cases immediately pursuant to issuance of the Commission's Order in the present matter except the matters involving coal price due to change in coal source.
- g) APNRL & PTC shall ensure 100% scheduling of power supply to WBSEDCL in terms of the PSA and PPA dated 05.01.2011 and 25.03.2011, respectively, within 60 days after the issuance of Order in the present matter by the Commission.

OBSERVATIONS OF THE COMMISSION

- 9.0 The Commission has taken a note of the terms of settlement and appreciated the endeavor put by the Ld. Advocates of all the parties to come to an amicable resolution to the dispute. The Commission observes that all the parties, involved in the instant case, should jointly submit an affidavit-in-settlement to the Commission so that the Commission can issue the final order disposing off the case, in question.

ORDER

- 10.0 In view of above, the Commission directs that –
- a) WBSEDCL, APNRL and PTC shall jointly file the terms of settlement in the form of affidavit within 22nd July, 2022;
 - d) Upon receipt of the affidavit in regard to terms of settlement, the Commission will pass the final order.

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(SUTIRTHA BHATTACHARYA)
CHAIRPERSON

DATE: 28.07.2022

Sd/-
SECRETARY