



**ORDER
OF
WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

IN THE MATTER OF

CASE NO. OA-428/22-23

AFFIDAVIT FILED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL), IN TERMS OF THE DISPENSATION ENVISAGED BY THE HON'BLE WEST BENGAL ELECTRICITY REGULATORY COMMISSION IN ITS ORDER DATED 03.02.2022 IN CASES NO. FPPCA-80/16-17 AND APR-55/16-17, IN ORDER TO BRING ON RECORD ADDITIONAL DOCUMENTS / DETAILS IN RELATION TO THE EXPENSES INCURRED BY WBSEDCL ON ACCOUNT OF BREAKDOWN MAINTENANCE OF UNIT 2 & 4 OF PURULIA PUMPED STORAGE PROJECT (PPSP) AND THE DELAYED PAYMENT MADE TO TAISEI CORPORATION BY WBSEDCL.

PRESENT:

**DR MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 24.04.2023



Affidavit filed by West Bengal State Electricity Distribution Company Limited (WBSEDCL), in terms of the dispensation envisaged by the Hon'ble West Bengal Electricity Regulatory Commission in its Order dated 03.02.2022 in Cases no. FPPCA-80/16-17 and APR-55/16-17, in order to bring on record additional documents/details in relation to the expenses incurred by WBSEDCL on account of breakdown maintenance of Units 2 & 4 of Purulia Pumped Storage Project (PPSP) and the delayed payment made to Taisei Corporation by WBSEDCL.



- 1.0 West Bengal State Electricity Distribution Company Ltd. ("WBSEDCL") has filed the present Petition on 26th July, 2022 seeking dispensation envisaged by the Hon'ble West Bengal Electricity Regulatory Commission in its Order dated 03.02.2022 in Cases no. FPPCA-80/ 16-17 and APR-55/16-17, in order to bring on record additional documents/details in relation to the expenses incurred by WBSEDCL on account of overhauling of Unit 2 & 4 of Purulia Pumped Storage Project (PPSP) and the delayed payment made to Taisei Corporation by WBSEDCL.
- 2.0 WBSEDCL, in the its Petition, inter-alia submitted that, in the above-mentioned APR & FPPCA order for WBSEDCL for the year 2015-16, the Commission did not consider Rs. 2872 Lakh towards breakdown maintenance of PPSP units due to non-submission of detailed documents. The Commission also withheld an amount of Rs. 4142 Lakh actually paid by WBSEDCL to Taisei Corporation with an observation that, net return earned by WBSEDCL utilizing the amount needs to be adjusted.
- 3.0 WBSEDCL, in the instant Petition, submitted break-up of its expenditure on breakdown maintenance of PPSP along with copies of purchase orders to substantiate their claim of Rs. 2872 Lakh. WBSEDCL further submitted that, it had withheld an amount of Rs. 4177 Lakhs towards payment to Taisei Corporation, who was engaged in 900 MW PPSP project. The PPSP project was taken up with financial assistance of Japan International Cooperation Agency (JICA) and balance funded by Government of West Bengal. Loan agreements in different tranches were executed between JICA and Government of India. As per loan agreement, disbursement of fund is made by JICA under "Transfer Procedure" directly to different vendors following certification done by WBSEDCL. As WBSEDCL did not certify bills for an amount of Rs. 4177 Lakh, the payment was not made to the contractor M/s Taisei Corporation. Since the amount of Rs. 4177 Lakh was not available in the hands of WBSEDCL, no



return was earned on the same neither it was utilised in the running business of WBSEDCL. Subsequently, in pursuant to order of Hon'ble Supreme Court dated 27.07.2015 in SLP (Civil) No. 16424 of 2015 and order dated 14.10.2015 in Review Petition (Civil) No. 3065 of 2015, WBSEDCL made payment of Rs. 4142 lakhs to M/s Taisei Corporation.

- 4.0 In view of above, WBSEDCL prayed to approve the amount of Rs. 2872 Lakh incurred by WBSEDCL on account of overhauling of PPSP units 2 & 4 and also release the amount of Rs. 4142 Lakh paid by WBSEDCL to M/s Taisei Corporation.

OBSERVATIONS

- 5.0 The Commission in the order dated 03.02.2022 has determined the APR and FPPCA of WBSEDCL for the year 2015-16, where the claims of WBSEDCL under the head of "Special Allocation" were not considered on the following grounds:

- (i) **Rs. 2872 Lakh**- On account of unforeseen breakdown of PPSP Units, as the information sought vide letter dated 17.06.2021 regarding insurance claim on breakdown of PPSP unit was not submitted.
- (ii) **Rs. 4142 Lakh** -On account of release of withheld amount to Tasai Corporation in absence of details regarding utilization of such amount by WBSEDCL during the withheld period.

The observations of the Commission made in this context at the time of determination of APR Order for the year 2015 – 2016 are reproduced below:

- "a) The Commission vide a letter dated 17-06-2021 sought some details regarding the amount of Rs 2872 lakhs claimed for breakdown of PPSP. WBSEDCL has not



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submitted such details within the due date of submitting reply. Hence the same is not considered.

(b) As seen from submission of WBSEDCL that an amount of Rs 4177 lakh was recovered in 2004 from the retention money of Taisei, a contractor of PPSP. Subsequently in 2015-16 pursuant to a court order, WBSEDCL released the amount recovered from the contractor along with an amount of Rs 4142 Lakh on account of interest on delayed payment. In this regard treatment of the withheld amount during the period of dispute is not stated by WBSEDCL i.e. whether the disputed amount was kept by WBSEDCL in earmarked investment pending court's decision and whether any return was earned on the same. However, it may be presumed that even if the retained amount was not kept as a separate investment, WBSEDCL actually utilized the withheld amount in business. Thus, any additional claim on this account is required to be substantiated by documents effectively bringing out the quantum of additional interest borne by WBSEDCL net of the return earned by WBSEDCL pursuant to this decision to withhold the amount from contractor. Since such details are not available with the application, the Commission decides to withhold the amount and directs WBSEDCL to provide the details if they chose to continue with the claim."

6.0 Upon examining the petition as well as the documents / clarifications provided by the petitioner, the Commission observed that –

- a) In the 900 MW PPSP project, the funds were disbursed to the vendors through JICA under 'Transfer Procedure' and the petitioner had no access to the fund for payments to the vendors. Hence, no return could be earned by the petitioner on account of delayed payment of Rs. 4142 lakhs to M/s Taisei.
- b) Regarding breakdown maintenance of units 2 & 4 of PPSP, the Commission vide letter dated 27.06.2021 directed WBSEDCL to clarify whether there was any insurance claim and the status thereof, towards the expenditure of Rs. 2872.00 lakhs incurred for the breakdown of Units 2 & 4 of Purulia Pumped Storage Project (PPSP).. The same was not clarified within due date during finalization of APR. WBSEDCL, in the instant Petition, submitted breakup of cost but remained silent



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about the status of settlement of insurance in the respective Consumer Dispute Redressal Commission

However, from a communication of WBSEDCL vide a letter dated 23.08.2021, it is observed that, the units 2 & 4 of PPSP against which the expenditure of Rs. 2872 lakh was incurred on account of breakdown maintenance were insured with National Insurance Company Limited (NICL) and the petitioner has already claimed a sum of Rs. 2885 lakhs from NICL towards the same. The claim with NICL still remained unsettled. It is also observed that the petitioner has also gone for redressal to the National Consumer Dispute Redressal Commission for Rs. 2383 Lakh and to the State Consumer Dispute Redressal Commission for Rs. 502 Lakh. Thus, the claim of WBSEDCL for release of Rs. 2872 Lakh on breakdown maintenance of PPSP cannot be considered at this stage as the case relating to insurance settlement is still pending with the National and State Consumer Redressal Forums.

Order

7.0 In view of above, the Commission gives the following directions:

- a) The amount of Rs. 4142 lakhs on account of delayed payment of M/s Taisei withheld by the Commission in their APR order dated 03.02.2022 for the year 2015-16 issued in favour of the petitioner is released herewith. The said released amount will be adjusted in the ensuing Tariff order of the petitioner
- b) The Petitioner is at liberty to approach the Commission afresh with their claim of Rs. 2872 lakhs incurred on account of breakdown maintenance of Units 2 & 4 of PPSP immediately upon the settlement of their claim with NICL as well as with



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State Consumer Dispute Redressal Commission for taking any further view on this issue.

8.0 The petition under consideration is thus disposed off.

9.0 Let a copy of the order be served upon the petitioner (WBSEDCL).

Sd/-
(PULAK KUMAR TEWARI)
MEMBER

Sd/-
(MALLELA VENKATESWARA RAO)
CHAIRPERSON

DATED: 24.04.2023

Sd/-
SECRETARY