

**DELHI ELECTRICITY REGULATORY COMMISSION**

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017

F.11(1434)/DERC/2016-17/5537

**Petition No. 51/2016**

Under section 142 of the Electricity Act, 2003

**In the matter of:**

1. M/s Indraprastha Power Generation Co. Ltd.

2. M/s Pragati Power Corporation Ltd.

.....**Complainants**

**Versus**

Tata Power Delhi Distribution Ltd.

.....**Respondent**

**Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson**

**Appearance:**

1. ShriAnand K Ganesan, Counsel for the Petitioner;
2. Shri Gopal Jain, Sr. Advocate for the Respondent;

**ORDER**

(Date of Hearing: 23.04.2019)

(Date of Order: 01.05.2019)

1. M/s Indraprastha Power Generation Co. Ltd. And M/s Pragati Power Corporation Ltd. have filed the instant Petition u/s 142 read with Section 86 (1)(k) of the Electricity Act, 2003 against Tata Power Delhi Distribution Ltd., for non-compliance of Commission's Order dated 18.12.2015 in Petition No. 61/2015 and Order dated 01.08.2016 in Review Petition No. 18/2016.
2. The Petitioners have submitted that the Commission vide order dated 18.12.2015 directed TPDDL to furnish Letter of Credit (LC) and also observed that it was not correct on part of TPDDL to go beyond the terms of PPA and

demand 0.1% additional rebate for establishing LC. Further, the Review Petition filed by the Respondent seeking review of order dated 18.12.2015 was also dismissed by the Commission vide Order dated 01.08.2016. Consequent to the above said orders the Petitioners have sent various reminders to TPDDL to establish and maintain LC. However, M/s TPDDL has neither complied with the Orders nor responded to the letters sent by the Petitioners.

3. On the other hand the Respondent submitted that there is an apprehension that as soon as the LC is established, the amount under dispute may also be realized by the Petitioner by encashing LC; and therefore, if the Petitioners give an undertaking that the amounts under dispute pending adjudication before this Commission or any other court of law shall not be realized through LC, the Respondent will establish LC.
4. On this issue the Petitioners provided an undertaking through an affidavit to the effect that:
  - 1) the Petitioners are willing to undertake before this Commission that upon the Respondent establishing the LC in terms of the Power Purchase Agreement and the order dated 18.12.2015 passed by this Commission, the Petitioners would not encash the LC towards any amount which are mutually agreed as disputed in the meeting held by Secretary (Power) GNCTD on dt. 18.4.2017 and also now pending for consideration before this Commission in Petition No. 40 of 2018 filed by the Respondent;
  - 2) that to sort out the issue, the above undertaking may be recorded in the order of this Commission itself instead of the Petitioners giving any undertaking to the Respondent;
5. Subsequently, the Respondents filed an IA in the tagged Petition No. 40/2018 seeking directions to the Petitioner to align PPA between the parties in terms of Regulations 137 and 138 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017. The Counsel for the Respondent submitted that if the terms of PPAs are not aligned, the Petitioners may encash LC on expiry of

30<sup>th</sup> day itself, whereas as per regulations the time provided for payment is 60 days from the date of issue of bills.

6. The contention of the Respondents has been examined and it is observed that the Regulations 137 and 138 are about surcharges on late payment (LPSC) and rebate on early payment of bills, respectively. These Regulations do not provide and are silent about the date of encashment of LC. The Regulations 137 and 138 of DERC (Terms and Conditions for Determination of Tariff) Regulations, 2017, are reproduced as under: -

***"137. "In case the payment of any bill for charges payable under these regulations is delayed by a beneficiary of generating entity or long term transmission customer/DICs as the case may be, beyond a period of 60 days from the date of billing, a late payment surcharge at the rate of 1.50% per month shall be levied by the generating entity or the transmission licensee, as the case may be."***

***138. "For payment of bills of the generating entity and the transmission licensee through letter of credit on presentation or through NEET/RTGS within a period of 2 days of presentation of bills by the generating entity or the transmissions licensee, a rebate of 2% shall be allowed."***

7. The Counsel for the Petitioners submitted that the PPA itself stipulates that rebate and LPSC shall be applicable as per DERC Regulations and therefore, there is no deviation or conflict between the terms of PPA and the provision of Regulations and thus such alignment has already been provided in the PPA.
8. However, it is evident from the aforesaid Regulations that the time of payment of bill without any LPSC is 60 days from the date of issue of bill. In other words, the Respondent has liberty to make payment by the 60<sup>th</sup> day without any LPSC. On the other hand, any payment before the 30<sup>th</sup> day from the date of billing is treated as early payment and for such early payment rebates are allowed, whereas on payment beyond 60<sup>th</sup> days, LPSC is levied. Thus it is clear that the Respondent can pay bills without any rebate or LPSC, within a time period of 30 days i.e. from 31<sup>st</sup> day till 60<sup>th</sup> day from the date of issue of the bill.

9. The mechanism of opening of LC is to ensure payments of bills and to avoid default in payments. The default of payment will start on 61<sup>st</sup> day and not from the 31<sup>st</sup> day as it is presumed by the Petitioners. Accordingly, it would not be prudent to encash LC on 31<sup>st</sup> day i.e. the date on which the payment has actually become due and no default in payment has taken place. Therefore, the Petitioner has to wait till the normal period of payment i.e. upto 60 days and in case payment is not made by 60<sup>th</sup> day, the LC may be encashed to avoid any default in payment of bills. Further the Petitioners have given undertaking not to realize the amount mutually agreed as disputed by the parties including the amount under dispute in Petition No. 40/2018 pending before this Commission.

10. In view of the aforesaid discussion the Respondent is directed to establish Letter of Credit as per the provisions of PPA, immediately without any further delay. In case of non-payment of bills by the Respondent by the 60<sup>th</sup> day, the Petitioner shall be entitled to encash Letter of Credit. Further the Petitioners shall not encash Letter of Credit in respect of amount mutually agreed as disputed by the parties including the amount under dispute in Petition No. 40/2018 pending before this Commission.

11. Accordingly, the Petition is disposed of.

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**