

## **DELHI ELECTRICITY REGULATORY COMMISSION**

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

No. F.11(748)/DERC/2011-12/

### **Application/Petition No. 67 & 68/2011**

**In the matter of: Regulation/Diversion of Power Supply relating to BSES Rajdhani Power Limited (BRPL) for Non-payment and Non-maintenance of Letter of Credit & Show Cause u/S 24 of the Electricity Act, 2003.**

**AND**

**In the matter of:**

BSES Rajdhani Power Limited  
Through its : **CEO**  
BSES Bhawan, Nehru Place,  
New Delhi-110019.

BSES Yamuna Power Limited  
Shakti Kiran Building,  
Karkardooma  
Delhi 110 032

**Coram:**

**Sh. Shyam Wadhera, Member & Sh. J.P. Singh, Member.**

Appearance:

1. Mr. Amit Kapur Adv. BRPL & BYPL ;
2. Mr. V.P. Singh, Adv. BRPL & BYPL;
3. Ms. Dipika Kalia, Adv. BRPL & BYPL;
4. Mr. Anupam Varma, Adv. BRPL & BYPL;
5. Mr. Nikhil Sharma, Adv. BRPL & BYPL;
6. Mr. Tarnima Vljva, Adv. BRPL & BYPL;
7. Mr. Gopal Saxena, CEO, BRPL;
8. Mr. Prashant Dua, Gm, BRPL;
9. Mr. Deepak Shankar, VP, BRPL;
10. Mr. Ajay Kumar, VP, BRPL;
11. Mr. Raj Arora, BRPL;
12. Mr. Parnay Dhingra, HOD Legal, BYPL;
13. Mr. S.C. Sharma, HOD BYPL ;
14. Mr. Sai Krishna, DGM, BYPL;
15. Mr. A.K. Sharna, BYPL ;
16. Ms. Surbhi Sharma, Adv. Govt. of NCT of Delhi;
17. Mr. M.G. Ramachandran, Adv. NTPC;
18. Ms. Sonia Dogra, Dy. Mgr, SJVNL;
19. Mr. N.K. Jain, GM (Comml.) Power Grid;
20. Mr. V. K. Mongia, Dy. Secy. (Power);
21. Mr. Mithlesh Kumar, AGM Power Grid;
22. Mr. Sunil Shori;
23. Mr. Ravinder Raina , CE (Comml), NHPC;
24. Mr. Manoj Kr. Jha, DM (Comml) NHPC;
25. Mr. V.Venugopal , DGM, SLDC.

**ORDER**

(Date of Hearing: 12.12.2011)

(Date of Order: 13.12.2011)

1. Ld. Counsel, Ms. Surbhi Sharma, appearing for Govt. of NCT of Delhi submitted a letter no. F.11(138)/2011/Power/4572 dated 12.12.2011 from Dy. Secretary(Power) addressed to the Secretary of the Commission in reference to the Commission's Order dated 08.12.2011. Ld. Counsel submitted that the proposal of Rlnfra, the Promoter Company of BRPL & BYPL regarding infusion of funds was examined by the Govt. of NCT of Delhi and it is noticed by the Govt. of NCT of Delhi that both BRPL & BYPL are in continuous default of payment to various utilities of both Central & State Governments. In spite of the notices of Regulation issued by NTPC, PGCIL and other generating companies BRPL and BYPL have not fulfilled their obligations under various Power Purchase Agreements. Recently NTPC had issued Regulation Notice on 01.12.2011 to regulate approximately 2000MW power w.e.f. 00:00 hrs. of 08.12.2011. However, the Govt. of NCT of Delhi had issued a comfort letter to NTPC on 07.12.2011 to avoid such massive regulation of power particularly in the interest of the consumers of Delhi.
2. The Government of NCT of Delhi submitted that it appears that both the Discoms are not making sincere efforts in resolving the crisis even after issue of Show Cause Notice by the Commission on 25.11.2011. Further, PGCIL in association with SJVNL, had already started the regulation of power since last week of 2011 on account of violation of PPAs with the said utilities.
3. Ld. Counsel Ms. Surbhi Sharma, further submitted that the Rlnfra, the Promoter Company of BRPL & BYPL proposed to infuse funds in the form of subordinate debt subject to the condition that DPCL shall also infuse proportionate funds. It was also stipulated by the Promoter Company of BRPL and BYPL that it shall not provide any further funds in future and it shall also not extend any other financial support to BRPL & BYPL and this is only a one time arrangement.
4. The Govt. of NCT of Delhi is of the view that such a proposal is not in accordance with the Shareholders agreement. Article V of Shareholder agreement stipulates that Rlnfra, the Promoter Company being majority of the Shareholders shall assist the Company to raise the funds and that BRPL & BYPL shall not require the holding company or its nominee to undertake or be a party to any guarantee.
5. Ld. Counsel Ms. Surbhi Sharma, further submitted that Hon'ble Supreme Court in its order dated 20.10.2011 had directed both BRPL & BYPL to pay the current charges in accordance with the terms and conditions of their respective PPA's for supply of energy. However both the DISCOMs have failed in compliance of the said order by

consistently defaulting and subjecting the consumers of Delhi to frequent regulatory/suspension notice of Power by various utilities.

6. Ld. Counsel Ms. Surbhi Sharma, further submitted that IPGCL/PPCL in its letter dated 09.12.2011 has informed the Government of NCT of Delhi that BRPL in violation of the order of DERC dated 24.11.2011 in Petition No. 51 of 2011 has paid the energy charges for the month of July and August only instead of September and October, 2011. Further, BYPL has not paid its dues as per the said order of DERC.
7. Ld. Counsel Ms. Surbhi Sharma, further submitted that Govt of NCT of Delhi had provided a soft loan to BRPL from power stabilization fund, to offset the alleged revenue gap of the DISCOM. However, in spite of notices to repay the loan, BRPL could not adhere to the deadline for the repayment and requested for waiver of penal interest which was rejected.
8. Ld. Counsel Ms. Surbhi Sharma, further submitted that BRPL & BYPL had also neglected the development of infrastructure in their distribution system respectively. Both the DISCOMS by their own admission are unable to meet the requirements of the distribution sector and could meet only the consumer deposit schemes thereby neglecting the overall development of infrastructure. It is apprehended by the Government of NCT of Delhi that both the Discoms may not be able to meet the next year summer load.
9. Ld. Counsel Ms. Surbhi Sharma, further submitted that keeping the above in view the DPCL is being advised not to infuse any funds as proposed by the RInfra, the Promoter Company of BRPL and BYPL.
10. Ld. Counsel Ms. Surbhi Sharma, further submitted that Govt. of NCT of Delhi has issued a comfort letter to NTPC on 07.12.2011 to defer regulation of power only for a period of one month.
11. Ld. Counsel Ms. Surbhi Sharma, made a request on behalf of Govt. of NCT of Delhi to direct BRPL & BYPL to honour the primary responsibilities imposed under shareholders, agreements license issued by the Commission for supply of Power, DERA, 2000 and Electricity Act, 2003.
12. Ld. Counsel Mr. M.G. Ramachandran, for NTPC submitted that in view of the assurance of Govt. of NCT of Delhi the implementation of the regulation of power supply has been deferred for a month w.e.f. 07.12.2011. He submitted a copy of letter dated 07.12.2011 issued by NTPC to GM/NRLDC deferring the implementation of Regulation of Power Supply till further notice.

13. Ld. Counsel, Mr. Amit Kapur appearing for BRPL & BYPL submitted that on the last date of hearing i.e. 07.12.2011 the Deputy Secretary, (Power) appearing on behalf of NCT of Delhi submitted before the Commission that the issue regarding infusion of 49% of additional promoter funds by DPCL was under active consideration with the Govt. of NCT of Delhi and a decision in this regard was expected to be taken in a day or so. However, now the Govt. of NCT of Delhi has submitted before the Commission that DPCL was being advised not to infuse any funds as proposed by the Rlnfra, the promoter company of BRPL & BYPL. In the present scenario they have to explore other options to resolve the present financial crisis. Mr. Kapur made a request for grant of a week's time to submit before the Commission a fresh proposal to meet the present financial crisis.
14. In view of the submissions made by the Learned Counsel of NTPC that NTPC has deferred the regulation of about 2000 MW of power for only one month w.e.f. 07.12.2011 it is imperative that a firm financial plan for liquidating the outstanding dues be put in place before then. The proposal of BRPL and BYPL for raising a loan of Rs.5000 crores from IDBI needs to be revised since the Delhi Power Company Ltd. has been directed by the Govt. of Delhi not to bring in any additional promoters funds to the extent of Rs.500 crores, which was a pre-condition for sanction of loan by IDBI. The Learned Counsel of BRPL and BYPL has now sought time to work out an alternative arrangement and in view of the seriousness of the crisis the Commission is inclined to give about a week's time at most to the distribution companies to come up with an alternative proposal with the assurance that additional finances to clear pending dues from generating companies will be available by the end of December, 2011. It is also necessary that the revised financing plan must have the approval of the creditors so as to preclude any default.
15. The Commission observes that there is very little time left to resolve the present financial crisis and in the absence of a viable financing plan, the Commission will have to quickly explore alternative measures including appointment of an Administrator to ensure that electricity supply to the consumers of Delhi is not disrupted. Hence, both BRPL and BYPL are being given one week's time till 20.12.2011 to come up with an alternative financing plan for raising the requisite resources in order to meet their pending commitments.
16. Case be now listed for hearing on 20.12.2011 at 03.00 p.m.
17. Ordered accordingly.

Sd/-  
(J.P. Singh)  
Member

Sd/-  
(Shyam Wadhera)  
Member