

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. P.D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member.**

Appearance:

1. Mr. Amit Kapur, Advocate, BRPL & BYPL;
2. Mr. Anupam Varma, Advocate BRPL & BYPL;
3. Ms. Deepeika Kalia, Advocate, BRPL & BYPL;
4. Mr. V.P. Singh, Adv. BRPL & BYPL;
5. Mr. Nikhil Sharma, Adv. BRPL & BYPL;
6. Mr. G.K. Saxena, CEO, BRPL;
7. Mr. Natrajan, BRPL;
8. Mr. Sunil Shori, V.P. BRPL;
9. Mr. Sanjeev Gupta, Addl. V.P. BRPL;
10. Mr. Ajay Kumar BRPL;
11. Mr. Raj Arora, BRPL;
12. Mr. Arun Gujral, V.P. BRPL;
13. Mr. Ramesh Narayanan, CEO, BYPL;
14. MR. S.C. Sharma, BYPL;
15. Mr. Sanjeev Seth, V.P. BYPL;
16. Mr. Sushil Agarwal, CFO, BYPL;
17. Mr. Suresh Agarwal, AVP, BYPL;
18. Mr. Haridas, Sr. Mgr. BYPL;
19. Mr. Sunil Kakkar, AVP, BYPL;
20. Mr. Pankaj Dhingra, BYPL;
21. Mr. P. Sai Krishna, BYPL;
22. Mr. Roop Kumar, GM, SLDC;
23. Mr. Venugopal, DGM(SO), SLDC;
24. Mr. Sanjeev Kumar, AM(SO), SLDC;
25. Mr. V. K. Mongia, Dy. Secretary(Power);
26. Mr. Vineet, Power Grid;
27. Mr. Mithlesh Kumar, Power Grid;
28. Mr. Vivek Naryan Sharma, Advocate DTL;
29. Mr. S. Mohari, DGM (Comml.)DTL.

ORDER

(Date of Hearing: 07.12.2011)

(Date of Order: 08.12.2011)

1. Ld. Counsel Mr. Amit Kapur appearing for BRPL and BYPL stated that detailed Affidavits in reply have already been filed with the Commission in respect of *suo motto* petition No. 67/2011 against BRPL for non-payment and non-maintenance of Letter of Credit as well as Show Cause Notices for suspension of licence to both BRPL & BYPL under Section 24 of the Electricity Act, 2003. He sought permission to take the Commission through these Affidavits in order to stress that in their opinion both BRPL and BYPL are facing severe financial constraints primarily due to absence of a cost reflective tariff over the past few years as a result of which there has been a heavy accumulation of regulatory assets.
2. The Commission at the outset stated that at this juncture, its prime concern was the maintenance of regular power supply in the NCT of Delhi and the Ld. Counsel was asked to spell out in detail steps taken by these companies to raise finances and ensure that outstanding dues of the power generating companies are cleared so that regulation of power supply is not affected.
3. The Ld. Counsel Mr. Amit Kapur appearing for BRPL and BYPL apprised the Commission regarding various actions that have been taken by these distribution companies to resolve the situation emerging from the Regulation Notices served by NTPC, Power Grid and other power suppliers for regulation of power supply effective from 00:00 hrs on 08.12.2011.
4. Mr. Kapur further submits BRPL and BYPL are in the final stages of concluding a loan agreement for Rs. 5000 crore with IDBI Bank, one of the conditions of which is that the promoters i.e. BRPL and BYP (51%) and the Delhi Power Company Limited (49%) should bring in additional promoters funds to the extent of 20% of the proposed loan, amounting to about Rs. 1000 crores.
5. Mr. Kapur submits that the representatives of IDBI Bank have also met the Govt. of NCT of Delhi as well as the Commission to satisfy themselves prior to giving sanction to the proposed loan.
6. Mr. Kapur further states that the Loan Agreement with IDBI Bank has been considered by the Board of Reliance Infrastructure Ltd. who have agreed to infuse additional promoter funds to the extent of 51% with the balance 49% to be contributed by the other joint venture promoter i.e. Delhi Power Company Ltd. (DPCL).

7. Shri V.K. Mongia, Dy. Secretary (Power) appearing on behalf of Govt. of NCT of Delhi states that the issue regarding infusion of 49% of the additional promoter funds by DPCL is under active consideration with the Govt. of NCT of Delhi and a decision in this regard is expected to be taken in a day or so. The Commission directs that the decision of DPCL be communicated to the Commission latest by 9.12.2011.
8. Mr. Kapur submits that considering the significant progress made by BRPL and BYPL in arranging additional funds to discharge their financial liabilities towards NTPC, Power Grid and other power suppliers, the Commission may direct NTPC, Power Grid and other suppliers of power not to implement the regulation of power supply proposed w.e.f. 00:00 hrs on 8.12.11 to enable the DPCL to convey their final decision with regard to the proposed infusion of additional promoter funds.
9. Mr. Kapur further submits that the total proposed reduction in availability of power comes to about 2000 MW and this would create an unprecedented power crisis in the NCT of Delhi.
10. In response to a query from the Bench, Mr. Kapur submits that this Commission has the jurisdiction to issue directions to NTPC, Power Grid and other power suppliers in proceedings under Section 86(1)(f) of the Electricity Act, 2003. He further states that a Petition No. 69/2011 is already pending with this Commission for adjudication of certain matters between the distribution companies and NTPC. Mr. Kapur further states that the Hon'ble Appellate Tribunal in its judgement dated 4th November, 2011 in Appeal No. 15 of 2011, I.A Nos. 28,29,169 & 92 of 2011 in the matter of Lanco Power Limited Vs. Haryana Electricity Regulatory Commission & others held that the State Commission can exercise the jurisdiction of adjudication under section 86(1)(f) of the Electricity Act, 2003.
11. Mr. Kapur further refers to Order dated 23.2.2011 in Appeal 2000 of 2009 in the matter of Pune Power Development Pvt. Ltd. Vs. Karnataka Electricity Regulatory Commission where again the Hon'ble Appellate Tribunal has held that the State Commission has jurisdiction under Section 86(1)(f) in certain cases.
12. Considering the argument put forward by the Ld. Counsel, the Commission lists Petition No. 69/2011 for hearing on admission in the matter of jurisdiction of this Commission under Section 86(1)(f) at 3:00 P.M. on 12.12.2011 along with Petitions Nos. 67 & 68 of 2011.
13. Considering the gravity of the situation emerging from the regulation notices issued by NTPC, Power Grid and other power suppliers; the progress made in arranging additional funds by the distribution companies to discharge their financial liabilities towards NTPC, Power Grid and other power suppliers; the likelihood of a final

decision of DPCL to infuse additional promoter funds; and the hearing scheduled for 12.12.2011 in this Commission on the matter of jurisdiction under Section 86(1)(f) and the prime facie case made out by the Ld. Counsel Mr. Kapur regarding the jurisdiction of this Commission, we are of the view that it would be expedient and in the public interest to maintain status quo in respect of power supply to the NCT of Delhi till the above matters are heard in this Commission on 12.12.2011.

14. Accordingly, this Commission directs NTPC, Power Grid and other power suppliers to defer the proposed regulation of power supply till 24:00 hrs. on 12.12.2011.
15. Ordered accordingly.

Sd/-
(J.P. Singh)
Member

Sd/-
(Shyam Wadhera)
Member

Sd/-
(P.D. Sudhakar)
Chairman