Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1626)/DERC/2018-19/6303

Petition No. 26/2019

In the matter of: **Petition regarding Financial exigencies faced by the Petitioner with respect to the three gas based stations of NTPC i.e, Anta, Auraiya and Dadri.**

Tata Power Delhi Distribution Ltd. **.....Petitioner**

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

ORDER

(Date of Order: 27.12.2019)

1. The instant Petition has been filed by Tata Power Delhi Distribution Ltd. (TPDDL) regarding certain exigencies faced by it with respect to the three gas-based stations of NTPC i.e., Anta, Auraiya and Dadri, power purchase costs of which had been allowed, retrospectively by the Commission *vide* Tariff Order dated 28.03.2018 and Orders dated 29.06.2018 and 04.07.2018 for FY 2012-13 to FY 2017-18 and thereafter. The petitioner has sought allowance of: -

   a) Late Payment Surcharge (LPSC) levied by the NTPC on the bills raised in respect of power supplied from Anta, Auraiya and Dadri plants from FY 2014-2015 to FY 2017-18;

   b) Net power purchase costs (net of normative Rebate as provided for in the MYT Regulations, 2011 and 2017) uptill FY 2017-18 grossed up for the Rebate denied by NTPC on the early payments of Energy Bills for power contracted/procured from NTPC Stations other than Anta, Auraiya and Dadri Gas Stations.

PETITIONER'S SUBMISSIONS

2. On 12.06.2015, this Commission passed an Order regarding Power purchase adjustment costs and disallowed the power purchase cost adjustment towards Anta, Auraiya and Dadri gas-based stations of NTPC on the ground that the PPAs in respect of these stations have already expired. The same was challenged by the petitioner before the Hon'ble Tribunal in Appeal No. 186 of 2015.

3. On 29.09.2015, this Commission passed the Tariff Order for FY 2015-16 in respect of the petitioner, and inter-alia, directed that since the power was physically received from Anta, Auraiya and Dadri gas based stations in FY 2012-13 and FY 2013-14, this Commission had considered all power scheduled from these stations

as if it was procured by the petitioner through short term sources. Accordingly, this Commission (i) allowed the cost of procurement of this power limited to the monthly average rate of exchange of Northern Region (N2) as per CERC Monthly Market Monitoring Report for FY 2012-13 and FY 2013-14 and (ii) disallowed procurement of power for future periods from FY 2015-16 onwards.

4. On 28.03.2018, this Commission was pleased to pass Tariff Order for the petitioner in Petition No. 67 of 2017 filed by the Petitioner stating that the Commission was pleased to allow procurement of power from Anta, Auraiya and Dadri gas-based stations of NTPC based on demand-supply scenario from FY 2017-18 onwards.

5. On 13.04.2018, NTPC issued a letter to the Petitioner regarding payment of outstanding dues in respect of energy bills raised by NTPC and stated that:

6. As on date, the total outstanding dues payable by the petitioner was Rs. 98.07 crores. Further, another bill of Rs.46.12 crore was raised by NTPC on 06.04.2018 for the energy supplied by NTPC in the month of March, 2018.

7. As per the PPA dated 08.05.2008, payments of energy bills were to be made by the last bank working day of the calendar month in which energy bills were raised by NTPC.

8. Also Petitioner would have to incur additional LPSC @1.5% per month in case payments are not made as per the applicable CERC Regulations.

9. In view of the same NTPC immediately sought payments of Rs.98.07 crores to enable NTPC to maintain uninterrupted supply of power to State of Delhi. On 26.04.2018 in view of the Order dated 22.03.2018 and Tariff Order dated 28.03.2018 passed by this Commission, inter-alia, allowing procurement of power from Anta, Auraiya and Dadri gas-based stations of NTPC from FY 2017-18, the petitioner filed IA No. 62763 of 2018 in Civil Appeal No. 7362 of 2016. By the said IA, the petitioner sought liberty of the Hon'ble Supreme Court to approach this Hon'ble Commission seeking costs incurred by the petitioner on account of power purchase from Anta, Auraiya and Dadri gas-based stations of NTPC for FY 2012-13 uptill FY 2016-17. Thereafter, on 21.05.2018, the Hon'ble Supreme court passed an Order in the IA No. 62763 of 2018 in Civil Appeal No. 7362 of 2016 filed by the Petitioner granting liberty to the Petitioner to pursue the matter before the Commission.

10. On 29.06.2018, this Commission passed an order in Petition filed by the petitioner and, inter alia, allowed the power purchase cost and procurement from Anta, Auraiya and Dadri gas based stations for future period i.e., from FY 2017-18. Further, on 04.07.2018, this Commission passed an Order in Petition No. 34 of 2018 filed by the petitioner and allowed the cost of power purchase from FY 2012-13

till FY 2016-17 for power procured from Anta, Auraiya and Dadri gas-based stations of NTPC.

11. However, in the meantime even after disallowance of the power procurement costs from Anta, Auraiya and Dadri gas-based stations of NTPC by this Commission, the power from Anta, Auraiya and Dadri gas-based stations continued to be scheduled to the petitioner and was accordingly billed by NTPC on the petitioner.

12. Pending resolution of the issue regarding disallowance of power from Anta, Auraiya and Dadri gas-based stations, the petitioner while making payments towards the bills raised by the NTPC, was reducing the charges sought by the NTPC for its Anta, Auraiya and Dadri gas-based stations.

13. On the other hand, NTPC was unilaterally adjusting the payments made by the petitioner towards subsequent bills of other NTPC stations, against the dues of Anta, Auraiya and Dadri gas-based stations outstanding/pending in terms of the preceding bills raised by NTPC.

14. Even after inconsistency in the adjustment/apportionment of payments the dues payable to NTPC did not exceed the period of 60 days in terms of Regulation 45 of the CERC (Terms and Condition of Tariff) Regulations 2014 and there was no LPSC to be payable by the petitioner. Only in October, 2017, that the outstanding dues as per the NTPC's methodology of adjustments/apportionment of payments made by the petitioner exceeded the limitation period of 60 days, and making the petitioner amenable to pay LPSC on the outstanding dues as per Regulation 45 of CERC (Terms and Conditions of tariff) Regulations, 2014.

15. As soon as the aforesaid Orders were passed by this Commission allowing procurement of power and associated costs of Anta, Auraiya and Dadri Gas, the petitioner had paid the principal outstanding amount towards the bills raised by NTPC for Anta, Auraiya and Dadri gas-based stations for FY 2017-18 onwards and is regularly paying the bills to NTPC.

16. However, since cost of power from Anta, Auraiya and Dadri gas-based stations of NTPC was allowed in March, 2018 i.e. when the period of FY 2017-18 was already over, and the said cost was admittedly not built in the ARR of the Petitioner in FY 2017-18 it was only allowed on 28.03.2018. As such there was a constrained default in payments towards bills raised by NTPC, which has resulted in an LPSC of Rs.3.83 crores.

17. As such, it is admitted position that the LPSC levied by NTPC was inter alia on account of non-payment of dues against the Anta, Auraiya and Dadri gas based plants of NTPC, which as stated hereinabove cannot be attributed to the petitioner. The same was beyond the control of the petitioner, as it could not

have acted against the directions of this Commission of not procuring power from Anta, Auraiya and Dadri gas-based plants of NTPC. In view of the same the LPSC should be allowed by this Commission otherwise the same would violate the doctrines of reasonableness, proportionality and the maxim, "actus curiae neminem gravabit" i.e., an act of Court shall prejudice no one.

18. It is therefore prayed before this Commission to allow the petitioner to recover the LPSC in petitioner's ARR to the tune of Rs. 3.83 Crores payable to NTPC for the bills raised up till FY 2017-18 instead of penalizing the petitioner who was acting in bonafide manner.

19. Apart from LPSC, another difficulty has arisen for the petitioner that while truing up the ARR and power purchase costs for particular financial year considers the net power purchase costs after reducing the maximum normative rebate of 2% from the same.

20. The Commission in the tariff Orders passed for FY 2015-16 to FY 2017-18 (29.09.2015 and 31.08.2017) did not make any provision for power purchase costs for Anta, Auraiya and Dadri gas based stations of NTPC. Further, these plants were not considered while computing the working capital requirements of the petitioner for the Financial Years as per the applicable MYT Tariff Regulations, 2011 & 2017.

21. In absence of any specific provision in the ARR of cost for procurement of power and associated costs for Anta, Auraiya and Dadri gas-based stations in FY 2015-16 to FY 2017-18, there could not have been any corresponding provision in the ARR for allowance of normative rebate which the petitioner would have earned in view of early payments made against the bills raised by the NTPC for these power plants.

22. As evident from the above, for FY 2012-13 to FY 2017-18, this Commission had not considered power purchase costs from these plants therefore correspondingly the petitioner could not have availed rebate from the NTPC for the period after 29.09.2015 when the Tariff Order was passed by this Commission, which disallowed the cost of power procurement from Anta, Auraiya and Dadri gas based stations.

23. In view of the above, it is therefore prayed before this Commission to allow Rs. 17.83 crores (which is the current outstanding as on date of filing the present petition) on account of the aforesaid circumstances which is subject to change till the final approval of this Commission.

COMMISSION'S ANALYSIS

24. The power purchase cost from Anta, Auraiya and Dadri stations of NTPC was disallowed vide PPAC order dated 12.06.2015 on the ground that the PPAs of

these stations had expired and no extension of PPAs of these stations was approved by this Commission. Against this Order of the Commission, the Petitioner had filed an appeal No. 186/2015 before the Hon'ble Tribunal, which was dismissed and the decision of this Commission, not allowing the Power Purchase Cost from the aforesaid stations was upheld. The Petitioner had approached the Hon'ble Supreme Court against the order of the Tribunal, which was later withdrawn by the Petitioner.

25. Vide Order dated 29.06.2018, this Commission allowed the power purchase cost and procurement from Anta, Auraiya and Dadri gas based stations for future period i.e., from FY 2017-18, and subsequently vide Order dated 04.07.2018, this Commission allowed the cost of power purchase from FY 2012-13 till FY 2016-17 for power procured from these stations.

26. It is to be understood that this Commission has allowed power procurement from the aforesaid three stations of NTPC as special case keeping in view the future requirement of the DISCOMs and the other factor i.e. bundled PPA for all stations of NTPC, otherwise the decision of the Commission not allowing power purchase from these stations was also upheld by the hon'ble Appellate Tribunal.

27. The Petitioner have submitted that NTPC used to first adjust the shortfall of payment related to Anta, Auraiya and Dadri gas stations; and thereafter, the LPSC on the shortfall and Rebate on the balance payment was calculated. Non-payment of bills related to power from these stations may attract LPSC, however, the terms and conditions of PPA are bilateral in nature and can be negotiated between the parties, especially when the power purchase was disallowed by the Regulator As already stated that power procurement from Anta, Auraiya and Dadri stations has been allowed as a special case and therefore, any consequential relief such as LPSC etc. shall not be admissible. In such a situation, the Petitioner may negotiate with NTPC, the matter of LPSC in respect of Anta, Auraiya and Dadri gas stations.

28. Regarding contention of the Petitioner that the cost of power from Anta, Auraiya and Dadri gas-based stations of NTPC was allowed in March, 2018 i.e. when the period of FY 2017-18 was already over, and the said cost was admittedly not built in the ARR of the Petitioner in FY 2017-18, it is made clear that in respect of payment related to Anta, Auraiya and Dadri stations, carrying cost for the FY 2017-18 has already been allowed in the Tariff Order dated 31.07.2019.

29. Regarding normative Rebate after 29.09.2015 till 31.08.2017, it is understood that in respect of power scheduled from Anta, Auraiya and Dadri gas stations, for non-payment of bills, no Rebate would have been available to the DISCOM. Accordingly, the normative Rebate in respect of these stations was not considered while calculating normative Rebate on the entire power purchase

cost. The NTPC for calculating rebate after adjusting methodology of the paid amount firstly towards the pending dues of Anta, Auraiya and Dadri, and on remaining amount after adjusting Anta, Auraiya & Dadri shortfall, calculated the Rebate, ought to have been contested by the Petitioner with NTPC. As already clarified no normative Rebate in respect of these stations was considered by this Commission, and therefore, no relief can be granted to the Petitioner in this regard.

30. As already observed in the foregoing paras the Petitioner may take up the issue of less Rebate and LPSC with NTPC.

31. The Petition is disposed of accordingly.

Sd/-
(Justice S S Chauhan)
Chairperson