



**DELHI ELECTRICITY REGULATORY COMMISSION**

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

F.11(1398)/DERC/2016-17/5305

**PETITION NO. 31/2016**

**In compliance of the order dated 04.04.2016 of the Hon'ble National Green Tribunal**

**In the matter of:**

North Delhi Municipal Corporation  
Through Commissioner,  
Dr. SPM Civic Centre,  
Minto Road,  
New Delhi

**...Petitioner**

Vs.

M/s. Delhi MSW Solutions Limited (DMSL)  
MCD Workshop Near Metro Station,  
Model Town Phase I  
Delhi 110 009

**....Respondent**

**Coram: Sh. Krishna Saini, Chairperson  
Sh. B.P. Singh, Member**

**Appearance:**

1. Ms. Puja Kalra, Advocate, North DMC
2. Mr. Matrugupta Mishra, Advocate, DMSL
3. Mr. Hemant Singh, Advocate, DMSL
4. Mr. B.M. Verma, North DMC
5. Mr. Manoj Kumar, North DMC

**ORDER**

(Date of Hearing: 19.07.2016)

(Date of Order: 27.07.2016)

1. The petitioner has filed the present petition in compliance to the order dated 04.04.2016 passed by the Hon'ble National Green Tribunal (NGT) in OA no. 22 of 2013 in the matter of Sukhdev Vihar RWA vs State of NCT Delhi, wherein the Petitioner was directed to file a petition before the Commission in regard to the sharing of the revenue between the Petitioner and project proponent viz. M/s Delhi MSW Solutions Limited.
2. The Petitioner vide this petition has prayed for the following:
  - 1) That the revenue sharing model between the department and the project proponent is to be decided from the date of

commencement of generation i.e. sale of the electricity from the waste to energy plant (Narela-Bawana Plant) and there should be annual increase in revenue sharing commensurate with the production of electricity till the handing over of the plant to North DMC;

- 2) The Central Electricity Regulatory Commission has notified the tariff for Refuse Derived Fuel (RDF) based MSW Project as Rs. 7.90 kWh;
  - 3) That such decision should not be detrimental to the North DMC interest at any point of time during the entire operation period of this plant, given a chance, if it is subjected to any scrutiny/audit by any external agency or expert committee.
3. The matter was listed for hearing today, which was attended by counsel and representatives of both the parties. The counsel of the parties argued their case at length.
  4. The submissions made by the Petitioner are as under:
    - (i) The project was commissioned in July 2009 vide concession agreement entered on 17 July 2009 for a contract period of 20 years between erstwhile corporation and M/s Delhi MSW Solutions Ltd. That a controversy arose between the North Delhi Municipal Corporation and the Project Proponent in regards to the WTE plant, that as per the concessionaire agreement, the concessionaire's scope of work included inter-alia developing an integrated municipal solid waste processing facility and engineered sanitary landfill facility in accordance with MSW Rules, involving a combination of technology, systems that includes material recycle facility (MRF) composting and Refuse Derived Fuel (RDF). The bid document further stated that the RDF shall be derived from the garbage through Pellatisation, without harming the environment. However, instead of selling/disposing RDF the concessionaire stored such refuse derived fraction at SLF site. That in view of violations of the contract by concessionaire, notices were issued for stopping the massive construction work in contravention of terms and conditions of agreement and resorting to construction without having valid permission/approval from North MCD.

(ii) Some steps were taken to settle the issue in larger public interest. Since there were deviations from agreed upon concessionaire agreement and in order to take safeguard to go ahead with cancellation of contract agreement or otherwise, the opinion of NEERI, Ld. ASG and CVC were taken. In accordance with the opinion of the Ld. ASG and with the approval of the competent authority vide its order dated 09.02.2015, a committee was formed under the chairmanship of E-in-C (DEMS) for negotiation and discussion on the various financial aspects of the proposed changes to the concession agreement. The committee's final opinion was that:

- (a) The concessionaire can submit a separate proposal with regard to extension of the project period in view of its viability, which may be examined by the Review Committee at appropriate time,
- (b) The concessionaire conveyed its agreement to share the revenue @3% from sale of power from 8<sup>th</sup> year onwards from COD till the concession period,
- (c) The concessionaire has agreed to forgo the incentive towards less land filling residues than 20% while penalty will be levied for land filling more than 20% residues, as proposed by the committee,
- (d) The concessionaire will form a separate SPV for WTE.
- (e) With regard to Novation Agreement, the committee has agreed to the required changes within the original concession agreement with respect to the WTE. Changes in penalty of dumping of inert in to landfill site and performance evaluation (clause 8.4 of original CA) as incorporated in the Novation agreement.

Accordingly, the matter was placed before the legal department and the supplementary agreement was drafted and further more the Finance Department also worked out the financial details and concurrence to the proposal of the Department was given by the Finance Department.

(iii) In view of the above, the North DMC left the matter to the wisdom of the Hon'ble NGT to decide the controversy with its expert in the larger public interest and also keeping in view the interest of North DMC with the best revenue sharing model, which should not be detrimental to the North DMC interest at any point of time during

the entire operation period of the plant. The Hon'ble NGT *vide* order dated 04.04.2016 directed the Corporation as well as the project proponent to file the petition before the Commission so to determine the rate at which power is to be purchased by the electricity company, as well as make an observation in regard to the sharing of the revenue.

5. The submissions made by the Respondent are as under :

- (i) The revenue sharing proposal is based on the failure of the respondent to adhere to the clauses of the agreement as they brought new technology without the approval of the Petitioners.
- (ii) The technology used in the plant is the same technology and there has been no change. Even if there is change of technology, it may not be a cause for revenue sharing. The revenue sharing will affect the generation tariff and also adversely affect the consumers of Delhi.
- (iii) The Plant is going to help the petitioner in reclaiming the land being used as garbage dumping site.

6. The Respondent was directed to file its Written Submissions within two days. However, the Respondent has not submitted the Written Submissions till date.

7. The Commission examined the submissions made by the parties and has come to the conclusion that initially the proposal for the revenue sharing was not contemplated by the Petitioner. However, subsequent developments led to the proposal about revenue sharing. After negotiations, the Respondent had agreed to provide the revenue sharing @3% to the Petitioner. As per the petitioner's submission, it could not decide whether to accept the proposal of 3% revenue sharing for want of the technical skills to find out whether the quantum of revenue sharing @3% is adequate or not.

8. It is worth mention that the Hon'ble NGT is seized of the matter of MSW energy projects of Delhi, before which the Petitioner and the Respondent are parties in litigation. On the request of the Petitioner to the Hon'ble NGT to ask this Commission to adjudicate on the issue of revenue sharing

between the parties, Hon'ble NGT has asked the petitioner to file a petition before this Commission and the Commission is directed to make observations on the issue.

9. First of all it is made clear that the functions of the State Commission as described u/s 86 of the Electricity Act, 2003 do not bestow the jurisdiction to the Commission to adjudicate or to issue directions on the issue of revenue sharing between two parties. It is basically a bilateral matter between two private parties and the Commission not having jurisdiction, shall not interfere in such matters.
10. As per the directions of Hon'ble NGT and keeping in view the fact that arrangements like revenue sharing or royalty may have impact on the tariff if it is allowed in the ARR of the generator, the Commission feels it imperative to make following observations:-
  - (i) Usually royalty or revenue sharing is paid in cases where one party parts with its assets to the other party or provides services or goods etc. for any commercial venture and in lieu of such service/goods/assets, intends to have a share in the revenue of such commercial activity. In the instant case the Petitioner is nor parting with its assets nor is it providing any service to the respondent. Therefore, it would not be appropriate to seek revenue sharing from the Respondent.
  - (ii) Secondly, through the instant plant the North Delhi Municipal Corporation would be in a position to reclaim its garbage dumping sites and at the same time there will be no further requirement of additional garbage dumping sites. Besides, the expenditure on treatment/development of garbage dumping site(s) will also be saved. Moreover, there will be an inherent saving on the cost of disposal of waste.
  - (iii) Moreover, the present arrangements would help to improve the environment of the NCT of Delhi.
  - (iv) In view of the above it may be seen that the project itself has inherent incentives on its own to the North Delhi Municipal Corporation
  - (v) In a similar Petition No. 30/2005 in the matter of the Timarpur Waste Management Limited, wherein MCD has proposed a royalty/tipping

fee of 5 paise per unit to be paid to MCD as an incentive for MCD to supply requisite quality and quantity of garbage to the project, after deliberation in detail on the issue, the Commission advised the MCD to withdraw the royalty/tipping fee of 5 paise per unit to be paid to them. In response thereto, the MCD had confirmed that they would not seek any royalty on the power produced from the project.

(vi) Keeping in view the aforesaid and the fact that the present scheme is aimed to improve environment of Delhi and is a supporting scheme to the Petitioner towards its duty of garbage disposal, the Petitioner is advised that it may not insist on revenue sharing.

9. With the above observations the matter is disposed of.

10. Ordered accordingly.

**Sd/-**  
**(B.P. Singh)**  
**Member**

**Sd/-**  
**(Krishna Saini)**  
**Chairperson**