



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 35 of 2017(D)

In the Matter of

Petition under section 86 (1) (f) of the Electricity Act, 2003 against withholding partial payment for fixed cost due to revision of advance schedule for the month of August 2015 and not supplying at least 70% power as per the scheduling.

M/s Shanti GD Ispat & Power Pvt. Ltd. ... Petitioner

V/S

Chhattisgarh State Power Distribution Co. Ltd. ... Respondent
(CSPDCL) Daganiya, Raipur

PRESENT : **Narayan Singh, Chairman**
: **Arun Kumar Sharma, Member**

APPEARANCE : 1. Shri Raunak Jain, Advocate for
Petitioner.
2. Shri Apoorv Kurup, Advocate & Shri S.K.
Pandey EE for Respondent

ORDER

(Passed on 08th May, 2018)

The petitioner M/s Shanti GD Ispat & Power Pvt. Ltd., a registered company under the Companies Act 1956, has filed this petition under section 86 (1) (f) of the Electricity Act, 2003, in the matter of withholding of partial payment for fixed cost due to revision of advance schedule for the month of August 2015 and not supplying at least 70% power as per the scheduling. The dispute has arisen between the petitioner, a generating company, and the respondent Chhattisgarh State

Power Distribution Company Ltd. (CSPDCL), a distribution licensee.

2. The petitioner prays for the following relief:-

(a) To direct the respondent to make payment of Rs. 40,94,381/- illegally withheld from the power sale bills of the petitioner for the month of August 2015 towards fixed cost, with interest at rates specified under the PPA for late payment till date of actual release of the fixed cost;

(b) To grant costs of the instant litigation on actual basis in favor of the Petitioner, including legal expenses.

3. Respondent submitted that the deduction of fixed cost for the month of August 2015 has been done as per the provision of the power purchase agreement dated 26.06.2010. It is also submitted that the copy of petitioner's letter dated 29.07.2015 indicating the revised supply schedule show that it was received at the office of respondent at Raipur on 03.08.2015. The letter of the petitioner dated 29.07.2015 indicates that the petitioner would export 20,00,000 KWh units of power in the month of August' 2015. This letter is dated two days prior to the beginning of the month of August' 2015 which is in contravention of clause 3 of the PPA, which mandates a clear 15 days time period for furnishing the month wise supply schedule. The recovery of fixed and variable charges in case of biomass generators is governed exclusively by clause 3, 4(a) and 4(b) of the PPA.

4. The petitioner submitted that they submitted advance schedule for power supply by petitioner during the month of Aug' 2015 vide letter dated 10.07.2015 wherein it was stated that petitioner would be exporting 70,00,000 KWh for the month of Aug' 2015. The said schedule was subsequently revised by the petitioner vide its letter dated 29.07.2017 due to major issues on the turbine. Due to this reason the petitioner would only be able to export 20,00,000 KWh for the month of Aug' 2015. Petitioner further submitted that due to a sudden major problem occurring in the turbine, the turbine rotor has to be sent to Bangalore for repairing purpose. The respondent submitted all the necessary documents in support of their arguments.

5. Respondent further submitted that power purchase agreement executed between the parties was for the supply of 13.5 MW firm power. The respondent has quoted the RE Regulation which is as under:-

"m) Firm power" in relation to biomass based generating plant means supply of electricity after COD which is equal or more than the 70% as decided by the Commission from time to time, energy supplied more than 100% of load factor of contracted capacity, on annualized basis, will not be treated as firm power. In relation to small hydrogenating stations, wind, solar, it means any electricity supplied from and after the COD if the entire generated electricity is supplied to a distribution licensee(s).

....

x) *"Non-firm power means electricity supplied by biomass-based power generating plants after COD, to a distribution licensee which is less than 70% of the scheduled electricity in a given period. Further electricity supplied by such generating station above 100% plant load factor of contracted capacity, on annualized basis shall also be treated as non-firm power. However, in case of other renewable energy plants, there is no concept of non-firm power."*

The supply of power by the petitioner for aforesaid month cannot be considered as firm power in light of the above provisions of RE Regulations.

Therefore Hon'ble Commission is requested to dismiss the present petition.

Commission's view:-

After hearing the parties in length, considering the submission and counter submissions, analyzing the PPA and other details submitted by the petitioner we have examined the aforesaid petition.

The petitioner vide letter dated 10.07.2015 submitted a schedule for supply of 70,00,000 kWh power for the month of August, 2015. Thereafter, due to major problem in turbine, the petitioner gave letter dated 29.07.2015 to CSPDCL Janjgir-Champa office for revision of schedule of energy for the month of August, 2015. This letter was acknowledged by CSPDCL Janjgir-Champa office on 31st July 2015. A copy of

this letter was forwarded to ED (Commercial), Raipur also. The petitioner intimated that due to major condition of Turbine they would export 20,00,000 kwh in the month of August, 2015. They also submitted all other relevant documents in this regard. Further, the respondent did not answer anything on the aforesaid letter. If CSPDCL was not willing to accept the revised schedule of August, 2015, why it has not communicated to the petitioner power company in the month of August, 2015 itself i.e. immediately after receiving the revised schedule. On a similar issue in petition no 26 of 2016(D), this Commission has held that letter of revised schedule of energy which has been acknowledged by CSPDCL local office before commencement of supply for a month, has to be considered for calculating load factor.

The clause 13 of the power purchase agreement dated 24.06.2010 executed between the CSPDCL and petitioner is as under:-

This agreement is subject to force majeure such as rebellion, mutiny, civil unrest, riot, strike, lockout, fire explosion, flood, cyclone, lightening, earthquake, war or other forces, accident or Act of God or other similar causes beyond control. This also includes the planned shut down or the maintenance of the system of both the parties as may be mutually agreed. Neither party shall be entitled to any claim compensation for damages in the event of forced majeure and tripping of feeder on account of load regulatory measures including under frequency operation.

The petitioner vide letter dated 29.07.2015 submitted the report of Engineers of Triveni Turbine Limited which reveals that –

- 1. Turbine was running at barring gear after tripping and rubbing noise between stationary and rubbing parts was observed*
- 2. Steam leakages were observed from the HP Gland area.*

It was therefore decided to check the steam path internals by carrying out open inspection of turbine

As per the inputs from M/s Shanti GD, the turbine was running normally till 21.07.2015 at 20:47 hrs, thereafter there was an electrical jerk from the grid indicated by the supervisory panel and turbine tripped. The electrical panel indicator also showed high inlet pressure. After removing the turbine the following observations were noted.

Due to rubbing and hitting of stationary and moving parts:

- a) Rotor trueness found not within acceptable levels after checking*
- b) Rotor HP-gland fins and labyrinth damaged*
- c) Front and Rear top and bottom gland holder found damaged.*

Based on the above observations Triveni Turbines Ltd. Recommendation M/s SGDIPL to send the rotor and matching parts along with rotor bearings

and all damaged parts to its Bangalore works for detailed inspection, repair and high speed balancing to its factory at Bangalore.

The turbine rotor was sent to Bangalore through VRL Logistics Ltd. in August, 2015. This is true that any rotating machine can go under breakdown without any pre information and therefore force majeure condition of PPA will be applicable.

In view of the above, we are of the considered opinion that the revised schedule submitted by the petitioner shall be accepted and respondent should revise the power purchase bill for Aug.' 2015 accordingly within 60 days of this order.

Both the parties shall bear their own costs.

We order accordingly.

**Sd/-
(ARUN KUMAR SHARMA)
MEMBER**

**Sd/-
(NARAYAN SINGH)
CHAIRMAN**