

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 37 of 2008

In the matter of
Petition filed by MSEDCL seeking damages for willful breach of EPA by Purti Sakhar Karkhana Ltd.

Shri. V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri. S.B. Kulkarni, Member

Maharashtra State Electricity
Distribution Company Ltd.
Prakashgad, Bandra(E),
Mumbai – 400 051

.... Petitioner

Vs.

Purti Sakhar Karkhana Ltd
Khadi Gramudyog Building,
Gandhi Sagar Mahal,
Nagpur 440 032

.... Respondent

ORDER

Dated: July 7, 2009

Maharashtra State Electricity Distribution Company Ltd., filed a Petition on 17.3.2008 claiming that the Respondent has breached the terms of the Energy Purchase Agreement dated 2.9.2002 (“EPA”) by not supplying electricity generated at its plant to the Petitioner. It has also been alleged that the Respondent breached the terms of the EPA by executing an agreement with Reliance Electricity Trading Co. Ltd. dated 30.1.2007 for sale of electricity generated from the 22 MW co-generation plant of the Respondent which was contractually supposed to sell power to the Petitioner. The Petitioner has moved the present petition for recovery of its losses upto the tune of Rs. 31.377 Crore. Apart from the said claim, the Petitioner has also submitted that a penalty at the rate of Rs. 5 per unit will also be



leviable on the Respondent for shortfall in renewable energy procurement in terms of the Order dated 16.8.2006 as passed by this Commission.

2. The prayers as made are as follows:

“a) Grant the damages upto the tune of Rs. 31.377 Crore computed as per Annexure A&B (COLLY);

b) Grant any other relief which this Hon’ble Commission deems fit in the facts and circumstances of the case.”

3. The Respondent filed its reply on 18.7.2008 objecting to the continuation of the proceedings in the present matter on the ground that an appeal had been preferred by it before the Appellate Tribunal for Electricity (“ATE”) from the Order dated 17.12.2007 passed by this Commission in Case No.s 54 and 59 of 2007. According to the Respondent, the said Appeal numbered as Appeal No. 2 of 2008 having not been disposed of by the ATE, the Commission’s Order dated 17.12.2007 had not attained finality. The Respondent also contended that whether the claim made by the Petitioner seeking damages as aforesaid would survive or not would depend on the final disposal of the aforesaid Appeal by the ATE. The Respondent requested that the present proceedings be kept in abeyance till final disposal of Appeal No. 2 of 2008 by the ATE. The Respondent also contended that the aforesaid EPA did not contain any provision by virtue of which damages could be claimed by the Petitioner herein as sought for.

4. A hearing was held on 23.7.2008, where Counsel for the Respondent made a request to keep the present proceedings in abeyance in view of the pendency of Appeal No. 2 of 2008 before the ATE. Since, there was no objection by the Counsel for the Petitioner, the Commission adjourned the case *sine die*, till final disposal of Appeal No. 2 of 2008 by the ATE.

5. On 16.3.2009, the Petitioner filed an ‘Application for withdrawal of Case No. 37 of 2008’ with the following prayers-

“(a) to allow the present application and permit Petitioner to withdraw the Case No. 37 of 2008;

(ii) pass such other or further orders and / or directions as Your Lordships may deem fit and proper in the facts and circumstances of the present case.”

In the aforesaid application, the Petitioner has stated that it is not now open for the Petitioner to claim damages from the Respondent for non-supply because the Petitioner has accepted the Order dated 6.1.2009 passed by this Commission in Case No. 85 of 2008 in terms whereof the aforesaid EPA would not operate as



'non-fossil fuel' / 'bagasse' was not used in the generation of electricity by the Respondent. It was held that till the time bagasse is available for 240 days per annum, the EPA would remain suspended. The Petitioner has stated that neither party has challenged this Order dated 6.1.2009. In view of this, as stated by the Petitioner in its application, the present claim for damages has become infructuous and has accordingly sought the permission of this Commission to withdraw the same.

6. By its judgment dated 24.3.2009, the ATE disposed of the aforesaid Appeal No. 2 of 2008 holding inter alia as under -

“31.0 In view of the above, Appellant, PSKL is not having the right of sale of power to third party, available to them as they have already started supply of power from the project to MSEDCL.

34.0(a)Accordingly, the Appellant, PSKL which has commenced supply from 18.03.2007 has given up its right to third party sale from that date. The aforesaid rights can be restored to the Appellant only if the parties of the agreement mutually agreed to it.”

7. The matter was heard again on 2.4.2009 as the ATE had passed its judgment in Appeal No. 2 of 2008. During the hearing the Commission directed the Petitioner to file an affidavit bringing on record the reasons for submission of the aforesaid 'Application for withdrawal of Case No. 37 of 2008'. By its letter of Director (Operations) filed on 2.4.2009, the Petitioner confirmed that “MSEDCL has not entered into any kind of agreement with M/s. Purni Sakhar Karkhana with regard to the withdrawal of Petition No. 37 of 2008”.

In view of the above nothing survives in the present petition, and the same is hereby dismissed as withdrawn.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V.P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC