

No.: N/43/15

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 16th June, 2016

Present:

- | | |
|----------------------------------|----------|
| 1) Shri M.K. Shankaralinge Gowda | Chairman |
| 2) Shri H.D. Arun Kumar | Member |
| 3) Shri D.B. Manival Raju | Member |

OP No.20 / 2015

BETWEEN:

1) Koppal Green Power Limited,
102, Shanti Vanam,
Kavuri Hills Extension,
HYDERABAD – 500 081.

2) Poweronicks Limited,
1st Floor, 5-35/197, I.E. Kukatpally,
HYDERABAD – 500 072.

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PETITIONERS

[Represented by Metro Lawyers, Advocates]

AND:

Gulbarga Electricity Supply Company Limited,
Opp.: Hotel Parivar,
Railway Station Road,
KALABURAGI – 585 101.

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RESPONDENT

[Represented by Justlaw, Advocates]

ORDERS

- 1) The Petitioner has filed this Petition seeking the following reliefs :
 - (a) To adjudicate the disputes between the Petitioners and the Respondent;
 - (b) To direct the Respondent to comply with the Order passed by this Commission in OP No.8/2013 on 22.01.2015;
 - (c) To direct the Respondent to execute the Supplementary Agreement to modify or amend the revised tariff;
 - (d) To direct the Respondent to pay ₹59,03,317/- to the 1st Petitioner and ₹53,24,960/- to the 2nd Petitioner as per the revised Tariff Order passed by this Commission in OP No.8/2013;
 - (e) To invoke penal action as per the provisions of the Electricity Act for non-compliance of the directions of this Commission; and,
 - (f) To pass such further or other orders as this Commission may deem fit and proper in the circumstances of the case.

OP No.20/2015

- 2) The material facts required for the disposal of the present Petition may be stated as follows :
- (a) The Petitioners are the Biomass Power Generators supplying energy to the Respondent-Gulbarga Electricity Supply Company Limited (GESCOM) under the Power Purchase Agreements (PPAs).
- (b) The Petitioners had filed OP No.8/2013 against the Respondent-GESCOM and other formal parties, praying for enhancement of the tariff mainly on the ground that there was enormous hike in the fuel cost. This Commission considered the request of the Petitioners and granted the following reliefs, by Order dated 22.1.2015 :

“The tariff applicable to the Petitioners’ units with effect from 1.1.2015 shall be as below :

Year	Tariff (Rs./kWh)
2014-15	4.63
2015-16	4.79
2016-17	4.97
2017-18	5.15

The fuel cost after 31.3.2018 will be as may be determined by the Commission after taking into account the relevant factors.”

- (c) In this Petition, the grievances of the Petitioners are that, the Respondent has failed to pay the enhanced tariff for the energy supplied from 1.1.2015 and has not come forward to modify the relevant term of the PPAs governing the tariff as ordered in OP No.8/2013.
- 3) Upon admission of the Petition and issuance of Notice, the Respondent appeared through its counsel and went on praying for time to file its objections. The request of the Respondent for grant of time to file its objections was finally refused on 21.4.2016 and the case was reserved for orders, by giving liberty to the Respondent to file its objections, if any, in the Office. Accordingly, the Respondent has filed its Statement of Objections in the Office on 3.6.2016, after serving a copy of the same to the Petitioners via E-mail.
- 4) In its Statement of Objections, the Respondent has not denied the passing of the Order in OP No.8/2013, the existence of the PPAs between the parties and the tariff payable was ₹4.3524 per Unit without escalation for the remaining period of the PPAs from April, 2011. The Respondent has contended that it has paid to the Petitioners for the energy supplied at the earlier rate of ₹4.3524 per Unit even from January, 2015 and the Petitioners have received the same without any protest or demur. Therefore, according to the Respondent, the Petitioners are precluded from raising any claim, after having accepted the payments without any protest or demur and it must be assumed that the Petitioners have

accepted those payments and any subsequent demand made for higher rate will not alter the situation, thus there was 'accord and satisfaction' by the Petitioners. Further, the Respondent has contended that, if at all the Petitioners did not intend to accept the payments, the same should not have been accepted, but should have been rejected. Therefore, the Respondent has requested for dismissal of the Petition as not maintainable.

5) The following issues would arise for our consideration :

(1) Whether the receipt of the amounts by the Petitioners without any protest from the Respondent towards the energy supplied at the rate of ₹4.3524 per Unit from January, 2015, would amount to 'accord and satisfaction' of the Petitioners' claim for enhanced tariff?

(2) What Order?

6) After considering the material placed on record, our findings on the above issues are as follows :

7) **ISSUE No.(1) :**

(a) The defense of 'accord and satisfaction' should be strictly proved by the party pleading it. Admittedly, there is no agreement between the

parties, in writing, to evidence the 'accord and satisfaction' pleaded by the Respondent. It is contended by the Respondent itself that, the conduct of the Petitioners in accepting the payments tendered by it for the energy supplied at ₹4.3524 per Unit, without any protest, would amount to an implied promise to accept lesser amount than what was due under the Order passed in OP No.8/2013 enhancing the tariff.

- (b) The above contention of the Respondent is not well-founded. We are of the considered view that, it is usual for a creditor to receive lesser amount than the amount due, without forfeiting the remaining part of the claim. Therefore, the creditor receiving lesser amount, without any protest, cannot be presumed to have forfeited the remaining part of the amount that might be due and payable. Had the amount been tendered by the debtor with a specific condition that lesser amount had been tendered towards full satisfaction of the claim of the creditor, then the acceptance of such lesser amount by the creditor, without any protest, would have led to the existence of an implied agreement of 'accord and satisfaction'. Admittedly, in the present case, the lesser amount was not tendered by the Respondent to the Petitioners with such condition, in order to infer 'accord and satisfaction' of the claim in question. Therefore, we hold that the defense taken by the Respondent in the present case is not sustainable. Accordingly, we answer Issue No.(1) in the negative.

8) **ISSUE No.(2)** :

For the foregoing reasons, we pass the following :

ORDER

The Respondent is directed to execute the Supplemental Agreements with the Petitioners to implement the revised tariff ordered in OP No.8/2013 on 22.1.2015 and to make payment accordingly, within 2 (two) months from the date of this Order.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER