

No.N/34/09

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 11th December 2009

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| 1. Sri K.P. Pandey | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 23/2009

Between

M/s NSL Sugars Limited
60/1, Residency Road, II Cross
B A N G A L O R E – 560 025
(Represented by its Advocate Sri Prabhuling Navadgi) ... Petitioner

And

1. Karnataka Power Transmission Corporation Limited
Kaveri Bhavan, Kempegowda Road
BANGALORE – 560 009
2. The Managing Director
Bangalore Electricity Supply Company Ltd.
Corporate Office, K.R. Circle
Bangalore – 560 001
(Represented by its Advocate Sri Sriranga) ... Respondents

1. This petition is filed by M/s. NSL Sugars Limited seeking a direction to pay a sum of Rs.9,06,42,009/- being the interest for delayed payment along with a direction to pay a sum of Rs.5,21,97,317/- to the petitioner again towards interest of delayed payment.

2. It is undisputed that the petitioner has a cogeneration power plant and has Power Purchase Agreement (PPA) initially with Respondent No.1 Karnataka Power Transmission Corporation Limited (hereinafter referred to as KPTCL) and on formation of Distribution Companies the same came to be assigned to

Respondent No.2 Bangalore Electricity Supply Company Limited (hereinafter referred to as BESCOM).

3. A dispute arose between the parties on the quantum of power to be supplied under the PPA and the liability of the respondents to pay for the same. According to the petitioner the respondents were liable to pay for all the energy supplied irrespective of the exportable capacity prescribed as per the rate provided in the PPA. Per contra it was the contention of the respondents that they were not liable to pay any charges for the energy supplied over and above the exportable capacity prescribed under the PPA. Ultimately both parties requested the Commission to fix a Tariff for the surplus power, in OP No.12/2007. The Commission after submission of both the parties held that under Clause 5.1 the respondents are liable to pay at the PPA rates for the surplus power also. Against this Order, respondents filed an appeal before the Hon'ble Appellate Tribunal for Electricity in Appeal No.19/2009. This appeal came to be dismissed on 26.5.2009 considering the fact that both the parties had agreed and requested the Commission to determine the Tariff for surplus power.

4. Pending the above appeal before the Hon'ble ATE petitioner had filed one more petition in OP No.01/2009 for enforcement of the order of the Commission passed in OP 12/2007. The respondents without prejudice to their contentions in the appeal complied with the order dated 10.7.2008 and filed a memo to that effect. This Commission after considering the submission of the respondents stating that they have complied with the order has disposed of the petition as having become infructuous.

5. We have considered the contentions of both the parties in the light of the orders passed by the Commission and the terms of the PPA.

6. Having regard to the fact that the respondents have complied with the orders of this Commission within the period prescribed, the question arises whether respondents are liable to pay interest on the amount paid pursuant to the Commission's Order as per the terms of the PPA or not.

7. Clause 6.3 of the PPA, which deals with payment of interest, is as below :

“6.3 Late Payment : *If any payment from Corporation is not paid when due, there shall be due and payable to the Company penal interest at the rate of SBI Prime Lending Rate plus 2 % per annum for such payment from the date such payment was due until such payment is made in full”.*

8. As per the above, interest becomes payable only if payment is not made when due.

9. Admittedly this Commission passed an order only on 10.7.2008 on the dispute raised by the petitioner in OP No.12/2007. Till then no amount was due from the respondents to the petitioner towards the alleged excess generation and supply of energy over and above the exportable capacity, since tariff specified in the PPA did not cover surplus energy injected and both parties through their counsels requested that the Commission on 10.1.2008 to fix a suitable Tariff for surplus injected power. Only after this submission, Commission determined the tariff. On 10.7.2008. Consequent to this Order only respondents became liable to pay the difference of the amount and not until then. The respondents admittedly have paid the difference of the amount within the time permitted by the Commission. Therefore question of paying any interest on the difference of the amount as per PPA till the disposal of the petition in OP 12/2007 does not arise. Accordingly we hold that petitioner is not entitled to any interest on the difference of amount which became payable after the disposal of OP No.12/2007 if paid within the period prescribed. Consequently this petition is liable to be dismissed and accordingly is dismissed. However, in case the amount has not been settled within 30 days as per the order of the Commission dated 10.07.2008, respondent is liable to pay interest for the delayed period at the rate as specified in the PPA.

Sd/-
(K.P. PANDEY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER