

No.N/44/10

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION
BANGALORE**

Dated this 7th April 2011

- | | |
|-------------------------------|----------|
| 1. Sri M.R. Sreenivasa Murthy | Chairman |
| 2. Sri Vishvanath Hiremath | Member |
| 3. Sri K. Srinivasa Rao | Member |

Case No. OP 24/2010

Between

M/s. Subhash Kabini Power Projects Limited
Mfar Silverline Tech Park, 2nd Floor
Plot No.180, EPIP 2nd Phase, Whitefield
BANGALORE – 560 066 ... Petitioner
(Represented by Sri L.M. Chidanandayya, Advocate)

And

1. Karnataka Power Transmission Corporation Limited
4th Floor, 'A' Block, Cauvery Bhavan, K.G. Road
BANGALORE – 560 009
2. The Chief Engineer
Load De spatch Centre, KPTCL
4th Floor, 'A' Block, Cauvery Bhavan, K.G. Road
BANGALORE – 560 009
3. The Managing Director
Mangalore Electricity Supply Company Limited
Paradigm Plaza, A.B. Shetty Circle
MANGALORE – 575 001
(Represented by Just Law Advocates) ... Respondents

1. This petition has been filed by the petitioner a generator for appointment of an Arbitrator to adjudicate the dispute that has arisen in relation to the tariff payments to be made for the months of July-August 2005, July-August 2006 and July-August-September 2007 to an extent of Rs.2,62,87,490/- for the electricity supplied over and above the contracted capacity.

2. During the pendency of the petition, both the parties filed a Joint Memo dated 16.9.2010 settling the dispute amicably. The terms of settlement as incorporated in the Joint Memo were as follows :

- (1) That the Respondents shall pay a sum of Rs.2,62,87,490/- (Rupees Two Crores Sixty Two Lakhs Eighty Seven Thousand Four Hundred and Ninety only) being the principal amount towards the energy supplied by the Petitioner as per the PPA rates.
- (2) That the said amount shall be paid by the Respondents within thirty days from the date of filing of this joint memo before this Hon'ble Commission.
- (3) If there is a delay in payment of the aforesaid amount within thirty days, the Respondents shall pay interest at the rate of 24 % for the delayed payment from its due date.
- (4) The Petitioner hereby gives up its claim regarding interest and litigation cost. The amount agreed is in full and final settlement of the claims raised in the present proceedings.
- (5) That the Petitioner has no claim with respect to non clearing of the tariff invoices which is the subject matter of the present proceedings.
- (6) That the Respondents shall adhere to the time prescribed above in making payment of Rs.2,62,87,490/- as per the PPA rates. If there is a delay on part of the Respondents in making payments to the Petitioner, the Petitioner reserves its right to claim interest at the hands of this Commission.
- (7) The amount agreed is in full and final settlement of all pending claims under the PPA up to date.

3. This Commission on 16.9.2010 recorded the settlement and disposed of the petition in terms of the settlement.

4. The petitioner on 23.11.2010 filed an application for recalling the order of disposal made in 16.9.2010 to delete Clause 7 of the Joint Memo or in the alternative to replace Para 7 as "The amount agreed is in full and final settlement of the present dispute" on the ground that a "full and final settlement of all pending claims under the PPA up to date" was not agreed to by it and by oversight the same was included in the Joint Memo.

5. As the controversy between the parties is limited to Clause (7) of the compromise petition, we have heard both the parties on the same. We have perused the application filed by the petitioner also.

6. In our considered view, the prayer made by the petitioner for modification of the petition deserves to be accepted. The compromise memo filed by the parties cannot include the claims which were not in dispute before the Commission for adjudication.

7. Sri Sriranga, learned counsel for M/s. Just Law Advocates appearing for the respondents, though did not concede, has not opposed the arguments placed by the petitioner's counsel.

8. Accordingly, we allow the application of the petitioner. Para (7) of the joint memo shall be read as "The amount agreed is in full and final settlement of

the present dispute" instead of "The amount agreed is in full and final settlement of all pending claims under the PPA up to date".

9. The joint memo recorded by this Commission shall remain unaltered as regards other terms.

Sd/-
(M.R. SREENIVASA MURTHY)
CHAIRMAN

Sd/-
(VISHVANATH HIREMATH)
MEMBER

Sd/-
(K. SRINIVASA RAO)
MEMBER