

**No.N/37/09**

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION  
BANGALORE**

**Dated this 28<sup>th</sup> October 2010**

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

**Case No. OP 25/2009**

**Between**

Koppal Green Power Limited  
102, Shanti Vanam, Kavuri Hills Extension  
H Y D E R A B A D – 500 033  
(Represented by its Advocate Sri Prasad Rao)

... Petitioner

**And**

1. The Principal Secretary  
Energy Department, Govt. of Karnataka  
Vikasa Soudha, Dr. Ambedkar Veedhi  
BANGALORE – 560 001
2. The Managing Director  
KPTCL, Kaveri Bhavan, K.G. Road  
BANGALORE – 560 009
3. The General Manager (Tech.)  
KPTCL, Kaveri Bhavan, K.G. Road  
BANGALORE – 560 009
4. The Controller (Procurement)  
State Power Procurement Coordination Centre  
Kaveri Bhavan, K.G. Road  
BANGALORE – 560 009
5. The Managing Director  
GESCOM, Opp. Hotel Parivar, Main Road  
GULBARGA – 585 102
6. The Financial Adviser  
GESCOM, Opp. Hotel Parivar, Main Road  
GULBARGA – 585 102  
(Represented by its Advocate Sri Sriranga)

...Respondents

1. The petitioner has instituted the present petition for recovery of delayed period interest totaling to Rs.2,49,40,242/- against the 2<sup>nd</sup> and 5<sup>th</sup> respondents. According to the petitioner, the respondents have not paid the above interest amount even though they are liable to pay the same in accordance with the terms of the PPA.
2. The respondents have filed the statement of objection on 12.11.2009 and the petitioner in response filed a rejoinder on 26.11.2009.
3. We have considered the entire material placed before us and also the arguments addressed by the counsel for both the parties.
4. The admitted facts are that the petitioner had entered into a PPA dated 30.3.2001 for sale of electricity to be generated from its 6 MW Biomass based power plant to KPTCL to be set up at Karatagi Village, Gangavathi Taluk, Koppal District. The 2<sup>nd</sup> respondent terminated the said PPA vide its termination letter dated 5.7.2003. This was questioned before the Hon'ble High Court of Karnataka in Writ Petition No.47240/2003. The Hon'ble High Court on 18.11.2003 granted an Interim Order of Stay of the termination order of 5.7.2003. On 10.6.2005 the PPA came to be assigned to the 5<sup>th</sup> Respondent.
5. During the pendency of the writ petition, the petitioner requested vide its letter dated 28.9.2004 that the works at its plant had been completed and ready for synchronization and therefore was willing to supply power at Rs.2.80 pending the writ petition without prejudice to its contentions. Accepting this, KPTCL granted synchronization and started purchasing power at Rs.2.80.
6. The above writ petition ultimately came to be disposed of by the Hon'ble High Court on 18.1.2007 following the Division Bench Judgment of High Court rendered in WA No.396/05 and WP 4507/2003. The Hon'ble Court observed that it is open to petitioner to avail of the remedy before the Commission under Section 86(1) of the Act, 2003 by presenting a petition within four weeks from 18.1.2007 and during the said four weeks the benefit of the interim order of stay shall enure to the petitioner and thereafter it is for KERC to pass appropriate

orders. Further the Hon'ble High Court observed that if the petitioner fails to file such a petition as directed within four (4) weeks, the interim order granted in the petition automatically comes to an end.

7. Pursuant to the orders of the Hon'ble High Court the petitioner filed OP 08/2007 before this Commission to set aside the order of termination of the PPA dated 5.7.2003 by KPTCL on the grounds that the same is illegal, arbitrary, malafide and unsustainable and to declare that the PPA dated 30.3.200 is valid and subsisting.

8. Before the Commission heard the above petition on merits, the parties held negotiations and arrived at a settlement and filed a Joint Memo recording the terms of settlement on 4.8.2007. In the Joint Memo it was stated that –

- (i) for the period from 7.1.2005 (CoD) to 31.3.2007 the tariff to be paid to the petitioner will be as per PPA dated 30.3.2001 (now revived);
- (ii) the petitioner company will be paid for the electricity supplied from 7.1.2005 at the rate of Rs.3.66 up to 31.3.2005, Rs.3.84 from 1.4.2005 to 31.3.2006, Rs.4.03 from 1.4.2006 to 31.3.2007 and thereafter escalated at 2 % for the base year of 2006-07;
- (iii) the respondents agree to pay arrears arrived at on account of the difference of tariff as agreed upon expeditiously but not later than two (2) months from the date of signing of the Joint Memo.

9. The Commission vide its Order dated 27.9.2007 approved the above terms of settlement and directed the parties to sign a Supplemental Power Purchase Agreement incorporating the terms of settlement. Accordingly a Supplemental Agreement to the revived PPA was also signed by the parties on 16.11.2007. Since then the petitioner is supplying electricity at the modified rates and the 5<sup>th</sup> respondent is receiving electricity and paying for the same at the modified rates.

10. The dispute between the parties in this case is whether the petitioner is entitled to interest on the delayed payments made by the respondents before disposal of OP 08/2007 and the arrears paid thereafter as per the terms of the PPA.

11. It is vehemently contended by the petitioner's counsel that once PPA which was under termination is revived, all the terms of the PPA come back into force from the date of PPA, i.e., 30.3.2001 as there was no novation of contract in terms of Section 62 of the Indian Contract Act. According to him the petitioner is entitled to interest as per the terms of PPA on the delayed payments. It is also contended by the petitioner's counsel that the claim for interest survives even during pendency of the litigation as the petitioner had raised the claims from time to time on the respondents, as there was delay in the payments. He further contended that since the petitioner was continuously corresponding with the respondents on his claim for interest Limitation Act will not bar the recovery of the same. The counsel for petitioner relied on the following judgments :

- i) Manager, Hardware and Tools Ltd. Vs. Saru Smelting Pvt. Ltd. (AIR 1983 All 329).
- ii) Kshetranath Sikdar and others Vs. Harasukdas Balkissen Das and others (AIR 1927 CCL 538).
- iii) Major (Retd.) Inder Singh Rekhi Vs. Delhi Development Authority (AIR 1988 SC 1007).
- iv) Hari Shankar Singhania and others Vs. Gaur Hari Singhania and others [2006 (2) Arb LR1 (SC)]

12. Per contra it is contended by the respondents' counsel that between the period from 5.7.2003 to 3.8.2007 there was no valid PPA subsisting as the same was terminated and it came to be revived by the parties only on 4.8.2007. According to him, till the PPA was revived and brought back into force the petitioner was not entitled to any interest as per PPA terms. He submitted that the interim stay of termination letter will not have the effect of reviving the PPA as per the law laid down by the Hon'ble Supreme Court in Sree Chamundi Moped's case [(1992) 3 SCC 1]. He further contended that the claim for interest on the arrears worked out and paid after the revival of the agreement for the period prior to such revival, is also untenable as till then there was no obligation for the respondents to pay the same and it became payable only after the disposal of the petition OP 08/2007 on 27.9.2007.

13. We have carefully considered the facts of the case and the material before us. Admittedly the PPA was not in operation from 5.7.2003 to 4.8.2007 and the challenge to termination was pending adjudication first before the Hon'ble High Court and thereafter before this Commission. Further admittedly the PPA came to be revived by the parties only on 4.8.2007 by way of a Joint Memo. Therefore when the PPA was not in operation, the clauses contained therein were not in operation including the terms for accrual of interest on delayed payments. The claims made by the petitioner are summarized at Page 43, Annexure Q of the petition. These claims made against KPTCL at Item 1 to 5 are all on the bills payable prior to the reinstatement of the PPA. Hence the PPA clause relating to payment of interest does not get attracted to these payments even if there is some delay. It is well settled law that interest is payable only if it is statutory or there is a contract to that effect. In this case neither of them are there. As far as the claim at Item 6 is concerned, the same also does not attract the interest as the arrears were worked out after the Commission's Order and became payable only after the disposal of the petition and within two (2) months. As regards the claims on GESCOM at Item Nos. 1,2 & 3, the reasoning stated above holds good. Only claims at Item 4 & 5 are partly payable as after the disposal of the petition the delay in payment does attract interest from 4.8.2007 as per the terms of the reinstated PPA.

14. The contention of the petitioner that once the PPA stands revived it comes into operation from the date it was signed and any delayed payment during the period before revival of the PPA also attracts interest cannot be countenanced.

The word 'revive' has been interpreted by the courts to primarily mean 'to give life again'. In the case of National Industrial Corporation Limited Vs. Registrar of Companies (1963) 33 Comp. Cases 265, the Hon'ble High Court of Punjab has held that 'Revive' brings back to life what has become moribund. It is a synonym to re-enact or reanimate a matter which has become void and inoperative in law. If we consider the facts of the present case in the light of the meaning given to the word 'revive' it has to be held that the PPA between the

parties was not in operation from 5.7.2003 to the date of revival through the Joint Memo and it came back into force only from the date of the Joint Memo dated 4.8.2007.

15. The contention of the petitioner counsel that since the termination was stayed by the Hon'ble High Court, the terms of the PPA continued during the pendency of dispute also cannot be accepted.

16. The Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Limited Versus Church of South India Trust Association, Madras [reported in (1992) 3 SCC Page 1 at Para 10] while considering the difference between the stay of the order and quashing of the order has held that while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the said order and it does not mean that the said order has been wiped out from existence.

17. As per the above law laid down by the Hon'ble Supreme Court the stay granted by the Hon'ble High Court in this case to the termination letter will not have the effect of reviving the contract which was under termination. The contract gets revived only after the Commission's Order dated 27.9.2007 and not before. If the contract was in operation during the stay as contended by the petitioner, then there was no need for the parties to state that the contract is 'revived' (emphasis supplied). Parties could have only modified the contract and continued. From the facts it is clear that the understanding of the parties was that the PPA was not in force and had to be revived to nullify the termination.

18. For the foregoing reasons we hold that –

- (i) the petitioner is not entitled to any interest on the delayed payments made prior to 4.8.2007 as per the terms of reinstated PPA.
- (ii) the petitioner is not entitled to interest on the amount payable as arrears till expiry of two (2) months from 4.8.2007 as per the reinstated PPA.
- (iii) the petitioner is entitled to interest on the delayed payments made after 4.8.2007 as per the terms of the PPA except for the arrears as stated at (ii) above.

19. Consequently respondents are directed to workout the interest if any payable as per the above findings and pay the same within a period of 'two months' from today.

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

Sd/-  
(VISHVANATH HIREMATH)  
MEMBER

Sd-  
(K. SRINIVASA RAO)  
MEMBER