

No.N/160/2019

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,

No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.

Dated: 28.01.2020

Present:

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

Order on IA in OP No.61/2019

BETWEEN:

Messrs Clean Solar Power (Tumkur) Private Limited.

... **PETITIONER**

[Represented by Neeti Niyaman, Advocate,
New Delhi]

AND:

1) Gulbarga Electricity Supply Company Limited.

2) Karnataka Power Transmission Corporation Limited.

... **RESPONDENTS**

**The Orders on Interim Application seeking clarifications
and/or waiver on imposition of Court fee**

The petitioner has filed the above Interim Application (IA) seeking clarification and/or waiver on imposition of court fee under Regulation 4 (13)

of the Karnataka Electricity Regulatory Commission (Fee) Regulations, 2016 (in short Fee Regulations, 2016).

2. The material facts for the disposal of this IA may be stated as follows:

- a) That the petitioner executed a Power Purchase Agreement (PPA) with the 1st Respondent for sale of Solar Energy as per the terms and conditions contained in the PPA. The petitioner was required to develop Solar Energy project for supply of Solar Energy. The relevant term of the PPA provided that the petitioner was required to fulfil the conditions precedent and commissioning of the project within the stipulated periods. Force Majeure event as defined in the PPA is enabling the petitioner to claim the extension of time for achieving the conditions precedent and commissioning the project.
- b) The relevant terms of the PPA provided that in case of default in achieving the conditions precedent and the commercial operation of the project, within the stipulated time, the petitioner would be liable for certain penalty and/or compensation and also the reduced tariff.
- c) The petitioner claims in the present petition that the delay in achieving the conditions precedent and commercial operation of the project were due to Force Majeure events. On the other hand, the 1st Respondent denying the claim of the petitioner for the Force Majeure events demanded for payment of penalty and/or compensation and reduced the tariff, for not achieving the time lines for fulfilling the conditions precedent and commercial operation.

3. In essence, the petitioner has filed the present petition praying for a declaration that it was prevented from achieving the required timelines due to Force Majeure events and for refund of the amount already deducted or adjusted by the 1st Respondent on the basis of the alleged delay in fulfilling the conditions precedent and achieving commercial operation of the project. The petitioner has paid Rs.25,000/- while filing the petition towards the fees payable under the Fee Regulations, 2016.
4. Sl. No.13 of Regulation 4 of the Fee Regulations, 2016 is the relevant provision under which the petitioner was required to pay the fee for filing the petition. The said Regulation 4 reads thus:

"4. Fee for Application/petition, Annual License Fee etc.,-

The fee payable along with the Application/petition filed before the Commission, and the Annual License Fee payable by the Licensees shall be as follows."

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount of Fee</i>
<i>1 to 12</i>	<i>.....</i>	<i>.....</i>
<i>13</i>	<i>Petition for adjudication of disputes under the Act.</i>	<i>Disputes involving monetary claims – 0.5% of the monetary claim, subject to a minimum of Rs.25,000/- . In other cases – RS.25,000/-</i>

5. The petitioner presented the petition in the Office of this Commission, tendering court fee of Rs.25,000/- and it appears the Registry insisted for payment of Court fee treating the dispute in question as involving "monetary claim." Thereafter, the petitioner presented the petition on 16.09.2019 by tendering court fee of Rs.25,000/- and requesting to place the file before the Commission for deciding the question on payment of proper court fee, by filing the present IA.
6. The petitioner contended that the main relief claimed is for declaration that the project was affected by Force Majeure event and the recovery of amount is only a consequential relief flowing from the relief of declaration. Therefore, it is submitted that this is not a dispute involving monetary claim, but it is a dispute falling other than "monetary claim" thereby the payment of court fee of Rs.25,000/- is sufficient and proper.
7. We have heard the learned counsel for the petitioner, he reiterated the grounds stated in the IA.
8. Regulation 3 (i) (a) provides that every petition etc., shall be made to the Commission along with a payment of stipulated fee specified in these Regulations. It is not in dispute that Sl. No.13 of Regulation 4 of the Fee Regulations, 2016, is the relevant provision for the applicability of payment of court fee. The said provision is already extracted above. It is true that the grant of relief for recovery of amount depends on the proof of Force Majeure events alleged by the petitioner. Still one has to say, it is a dispute involving monetary claim as the petitioner has claimed

recovery of certain amounts. If there is no occasion to grant monetary claim in a dispute, such a dispute falls under the head "In other cases" stated in Sl. No.13 of Regulation 4. Therefore, this Commission is of the considered view that the present petition is to be treated as a dispute involving monetary claims, though other disputed facts are to be adjudicated for deciding the merit of claim for recovery of amounts. Though, the relief for refund of monetary claim depends solely on the question which could be raised as a declaratory relief, the payment of court fee should be on the monetary claims made by the petitioner in the petition. The Fee Regulations, 2016, has not classified different nature of claims in detail under different heads for payment of court fee. Therefore, the petitioner is liable to pay court fee treating the present dispute as a dispute involving monetary claim.

9. It is further contended that the 1st Respondent should have filed the petition before the Commission before effecting any deduction and that was tactfully shifted to the petitioner. We are of the considered opinion that the 1st Respondent cannot be compelled to raise the dispute before the Commission before effecting the deduction or adjustments out of the amount payable to the petitioner.

10. It is further contended that the court fee to be levied in a litigation should not be exorbitant and there should have been some upper limit under the Fee Regulations while levying the court fee on percentage basis. We are of the opinion that the payment of court fee at 0.5% of the monetary

claim as specified in Sl. No.13 of Regulation 4, is not excessive or exorbitant considering the monetary claim made in this case and that there is also no necessity to restrict the payment of court fee to any particular amount in the present case.

11. For the foregoing reasons, we pass the following:

ORDER

The Interim Application is dismissed. The petitioner is directed to pay the deficit court fee for filing the petition on the monetary claims as made in the relief columns, within four (4) weeks from the date of this order, failing which the petition stands rejected.

Sd/-

(SHAMBHU DAYAL MEENA)
CHAIRMAN

Sd/-

(H.M. MANJUNATHA)
MEMBER

Sd/-

(M.D. RAVI)
MEMBER