

No. N/9/2021

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 12.11.2021

Present

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

OP No.05/2021

BETWEEN:

M/s Giriraj Enterprises,
A Partnership firm registered under the
provisions of the Indian Partnership Act, 1932,
having its Principal place of business at
Malpani House, I.G. Road,
Sangamner,
District: Ahmednagar.
(Represented by its Authorised Signatory &
Senior Manager – renewable Power Projects
Mr. Sagar Durgavale)

....PETITIONER.

(Represented by Sri Shridhar Prabhu, Advocate &
Sri Jay Datt Bhatat, Advocate for
M/s Navayana Law Offices)

AND:

Hubli Electricity Supply Company Limited (HESCOM),
A Company Registered under the provisions of
Companies Act, 1956 having its Registered Office
Office at PB. Road, Navanagar,
Hubballi-580 025.
(Represented by its Managing Director)

....RESPONDENT

(Respondent represented by Sri Shahbaaz Husain,
Advocate for M/s Precinct Legal).

ORDERS

1. The present petition is filed under Section 86 (1) (f) of the Electricity Act, 2003, praying for recovery of dues towards the sale of energy in respect of the principal amount outstanding and the interest accrued on it, pursuant to two Power Purchase Agreements (PPAs) both dated 13.07.2018, entered into between the petitioner & the respondent (HESCOM) in respect of 10 MW & 20 MW Wind Power Projects respectively belonging to the petitioner.
2. The petitioner in the relief column has stated the details of arrears towards the principal and the interest in respect of the energy supplied from the two Wind Power Projects as follows:

Wind Power Project	Principal (Rs.)	Interest (Rs.)	Total (Rs.)
10 MW	6,31,89,161	1,00,72,252	7,32,61,413
20 MW	13,24,25,386	3,61,88,343	16,86,13,729

The amounts towards arrears as noted above are stated in the two Legal Notices both dated 09.09.2020 (Annexure-P4 collectively).

3. The petition is filed on 15.01.2021 with the deficit Court fee of Rs.3,52,482 with an undertaking to pay the same subject to receipt of the said amount from the petitioner. The petitioner had paid Rs.8,56,893 towards part payment of the Court fee payable on the date of filing the petition. Therefore, the case was called for admission on 25.03.2021. On the request of the learned counsel for the petitioner, the petition was admitted and notice was ordered to be issued to the respondent (HESCOM). On 25.05.2021, the learned counsel for the petitioner agreed

to remit the balance Court fee within two weeks. The respondent (HESCOM) appeared through counsel and the case was posted for statement of objections by 06.07.2021. Thereafter, on 06.07.2021, the case was adjourned to 19.08.2021. During the hearing on 19.08.2021, the respondent (HESCOM) submitted that the statement of objection is filed on 18.08.2021. The learned counsel for the petitioner again prayed three days, time to file memo regarding payment of deficit Court fee. The case was adjourned to 24.09.2021.

4. On 24.09.2021, the proceedings recorded in the order sheet reads as follows:

"Case is called for hearing on 24.09.2021 through Video Conferencing. Counsel for petitioner Sri Siddaveer Chakki for Navayana Law offices present, present filed memo dated 24.09.2021 and agreed to the calculations made by the Respondent in their statement of objections in respect of balance payment and LPS. Counsel for Respondent Ms. Stephania Pinto for Precinct Legal present. Petitioner Counsel agreed to file memo duly accepting the calculations mentioned in the statement of objections and sought for disposal. Call on 28.09.2021."

5. On 28.09.2021, the proceedings recorded in the order sheet reads as follows:

"Case is called for hearing on 28.09.2021 through Video Conferencing. Counsel for petitioner Sri Siddaveer Chakki for Navayana Law offices present, submits that memo dated 24.09.2021 is filed, agreed to accept the calculations made by the Respondent in their statement of objections both in respect of balance payments and LPS. Counsel for Respondent Ms. Stephania Pinto for Precinct Legal present. Petitioner Counsel agreed to file memo duly accepting the calculations mentioned in the Late payment surcharge and prays to pass orders. Commission reserved the case for orders accordingly."

6. However, the Memo dated 24.09.2021 filed by the learned counsel for the petitioner, reads as follows:

"The petitioner most respectfully submits that the Respondent in its Statement of Objections dated 5th July, 2021 has filed the Statement of balance and Statement of Surcharge payable by the Respondent at Annexure-R1 and Annexure-R2 respectively.

Further, Order XII Rule 6 of the Code of Civil Procedure, 1908 empowers the court to pass judgment on admission on its own motion and without waiting for the determination of any other question between the parties.

In view of the above said provisions and admission by the Respondent, this Hon'ble Commission may kindly pass the judgment by allowing the above petition with a direction to Respondent to honour the payment forthwith in the interest of justice and equity."

7. Order XII Rule 6 of the Code of Civil Procedure, 1908, reads as follows:

"R.6. Judgment on admissions:- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the said judgment was pronounced."

8. It can be said that the submission of the learned counsel for the petitioner agreeing to accept the calculations made by the respondent (HESCOM) in its statement of objections, both in respect of balance payments remaining due towards the invoices raised for the energy supplied and

the balance remaining due towards the late payment surcharge, is not properly stated in the above said Memo.

9. Therefore, we thought it fit, not to pass any order on the basis of the submission as recorded in the proceedings dated 24.09.2021 or 28.09.2021.
10. a) We have gone through the pleadings and the documents of both the parties. There is no dispute that the petitioner was supplying energy from the dates of commissioning of the two Wind Projects to the respondent (HESCOM) in terms of the PPAs executed between the parties. There is also no dispute regarding the date on which the payment becomes due on submission of the tariff invoices and the rate of late payment surcharge on the delayed payment of tariff invoices as specified in the terms of the PPAs. The calculation sheets produced by the petitioner as well as the respondent (HESCOM), show that both have adopted the same procedure to arrive at the balance arrears towards the tariff invoices and the arrears towards the late payment surcharge on the delayed payments of tariff invoices.
- b) The statement of objections of the respondent (HESCOM) narrates certain reasons due to which it has been facing financial difficulties, due to which it could not make payments of tariff invoices on or before due dates. Further it states that the 15% per annum late payment surcharge may be ordered to be reduced to 7.2% per annum. In support of it, it has relied upon the Order dated 08.05.2020 passed by this Commission in

the matter of *“implementation of the directions of the Government of Karnataka dated 16.04.2020 under Section 108 of the Electricity Act, 2003 issued to the Karnataka Electricity Regulatory Commission regarding waiver/Reduction of Late Payment Surcharge-reg.”*

11. In view of the facts narrated above and considering the merits of the pleadings of the parties, we are of the considered view that the whole case may be disposed of at once, even without further hearing of the parties.

12. The only question that arises for our consideration is:

As to whether the respondent (HESCOM) is entitled to for a lower rate of Late Payment Surcharge than the one agreed in the PPAs, if so to what period?

13. a) The supply of energy from the Wind Power Project is in the nature of commercial transaction. The rate of tariff and the terms regarding payment towards the tariff invoices and the term regarding Late Payment Surcharge for the delayed payment of tariff invoices are determined and approved by the Commission keeping in view of the financial liabilities of the Project Developer. Therefore, the difficulties stated by the respondent (HESCOM) regarding the realization of electricity charges from the agricultural sector consumers towards supply of energy to Irrigation Pump-sets and delay in receiving the subsidy from the Government towards such supply of energy to irrigation pump-sets of farmers and thereby the cash-flow of respondent

(HESCOM) is being highly affected etc., are not sufficient grounds for reducing the rate of Late Payment Surcharges.

- b) The respondent (HESCOM) relied upon the Order dated 08.05.2020 stated above for claiming reduction in the Late Payment Surcharges. The said Order is applicable for the period from 24.03.2020 to 30.06.2020 for payments which become due within the said period (both days inclusive), payable to generating companies and transmission licensee. The reduced interest rate of 0.60% per month is fixed towards the Late Payment Surcharges. The delayed payment falling due before 24.03.2020 or after 30.06.2020 is excluded from the benefit of this Order.
- c) The above said Order is applicable for payments becoming due as noted above in respect of all generating companies whose tariff have been determined under Section 62 of the Electricity Act, 2003 and transmission licensee. In the present case, both the Wind Power Projects of the petitioner are governed by the relevant Generic Tariff determined by this Commission. It is not in dispute the invoices relating to supply of energy for the months of January to April 2020 submitted for payments have become due in between the period from 24.03.2020 to 30.06.2020. Therefore, for these months the Late Payment Surcharges can be considered at reduced rate in terms of the above stated Order dated 08.05.2020. Except to this extent, the respondent (HESCOM) is not entitled to pay any reduced Late Payment Surcharges.

d) For the above reasons, we hold that the respondent (HESCOM) is entitled to claim the reduced Late Payment Surcharges on the tariff invoice payments becoming due in between 24.03.2020 to 30.06.2020, in terms of the Order dated 08.05.2020 (Annexure-R3), but not for any other period.

14. a) We found that the payments due towards tariff invoices for the energy supplied and the payments due towards Late Payment Surcharges, as claimed by the petitioner as well as the respondent (HESCOM) is substantially same. The petitioner and the respondent (HESCOM) have filed the statement of accounts for different period, therefore, different figures appear under these heads. We hereby make it clear that the correctness of the statement of accounts produced by respondent (HESCOM) at Annexure-R1 & R2, is always subject to arithmetical E&OE.

b) For the above reasons, we pass the following:

ORDER

a) With regard to arrears of tariff invoices, the respondent (HESCOM) shall pay Rs.3,03,66,840 (Rupees Three crores three lakhs sixty six thousand eight hundred forty only) for the energy supplied from 10 MW Wind Power Project and Rs.6,80,16,136 (Rupees six crores eighty lakhs sixteen thousand one hundred thirty six only) for the energy supplied from 20 MW Wind Power Project to the petitioner for the period mentioned in the Statement of Account at Annexure-R1;

- b) With regard to arrears of Late Payment Surcharges, the respondent (HESCOM) shall pay Rs.1,15,01,483 (Rupees one crore fifteen lakhs one thousand four hundred eighty three only) towards delayed payments on tariff invoices for the energy supplied from 10 MW Wind Power Project and Rs.4,51,29,882 (Rupees Four crores fifty one lakhs twenty nine thousand eight hundred eighty two only) towards delayed payments on tariff invoices for the energy supplied from 20 MW Wind Power Project to the petitioner for the period mentioned in the Statement of Account at Annexure-R2, subject to deduction of reduced Late Payment Surcharges in terms of Order dated 08.05.2020 (Annexure-R3), if not already deducted;
- c) The above said arrears shall be paid within sixty days from the date of this Order.
- d) The petitioner shall pay the deficit Court fee (filing fee) of Rs.3,52,482 (Rupees three lakhs fifty two thousand four hundred eighty two only) within thirty days from the date of this Order, failing which the petition shall stand rejected, as if no relief had been granted in this Order.

sd/-
(SHAMBHU DAYAL MEENA)
Chairman

sd/-
(H.M. MANJUNATHA)
Member

sd/-
(M.D. RAVI)
Member