

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 12th December, 2017

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

OP No. 93/2016

BETWEEN:

Gulbarga Electricity Supply Company Limited,
Station Road,
Kalaburagi – 585 101.

..

PETITIONER

[Represented by Justlaw, Advocates]

AND:

Bhagyanagar Solvent Extraction Pvt. Ltd.,
8.2.348/1, Ground Floor,
Flora Apartments, Road No.3,
Banjara Hills,
Hyderabad.

..

RESPONDENT

[Respondent remained absent]

ORDERS

- 1) The Petitioner has filed the present Petition for recovery of `69,79,681.49 with interest at the rate of 18% per annum from the date of filing of the

Petition, i.e., from 30.12.2016 till the date of realization, from the Respondent, with costs and such and other reliefs.

- 2) The Respondent was not served with Notices sent through Registered Post Acknowledgment Due. The Notices were returned, by the Postal Department, stating that no such Company existed at the given address. The Petitioner, therefore, requested for permission to take out Notice to the Respondent in the New Indian Express Newspaper, having wide circulation at Hyderabad. The Petitioner was permitted to take out Notice to the Respondent through publication in the said Newspaper. Accordingly, the Notice was issued to the Respondent through the Daily Newspaper, "The New Sunday Express" dated 09.04.2017, Hyderabad Edition (Page No.12 of the said Newspaper). In the said Notice, the Respondent was called upon to appear before this Commission on 25.04.2017 in the above case, for answering the claim of the Petitioner for recovery of the above-said amount with interest. On 25.04.2017, when the case was called, the Respondent remained absent. The service of the Notice on the Respondent was taken as 'sufficient'. Therefore, the case proceeded in the absence of the Respondent.
- 3) The learned counsel for the Petitioner was heard on the merits of the case.

- 4) We have gone through the averments made in the Petition and the documents produced in support of the claim made by the Petitioner.
- 5) The particulars of the claim made by the Petitioner may be stated as follows:

Sl.No.	Description	Amount (in `)
1	Balance amount outstanding after adjustment of the rival claims between the Petitioner and the Respondent arising out of the Power Purchase Agreement (PPA) dated 18.10.2001, as on 01.04.2011.	22,41,712.00
2	Interest at the rate of 18% per annum on `22,41,712 from 01.04.2011 to 30.06.2016.	20,85,065.00
3	Amount paid to the Creditors of the Respondent in terms of the Garnishee Orders issued in different Suits, filed in the City Civil Court, at Chennai, against the Respondent. - Paid on 13.01.2015 .. `16,46,002 - Paid on 24.02.2015 .. ` 4,61,473	21,07,475.00
4	Interest at the rate of 18% per annum on the amount mentioned at Sl.No.3 above, from the date of payment upto 30.06.2015.	5,45,429.49

- 6) (a) The facts leading to the claim of `22,41,712 becoming due to the Petitioner, may be stated thus :
- (i) The Respondent had executed the PPA dated 18.10.2001 in favour of the Petitioner, for supply of energy from its Biomass

Co-generation Plant, situated in the Raichur Taluk, Raichur District. Certain litigations were pending before this Commission, in respect of the rate of tariff. Finally, there was a settlement between the parties and the Petitioner was directed to pay certain amounts, with interest, to the Respondent. The Petitioner had paid the principal amount that became due, as per the settlement, but had not paid the interest that became due.

- (ii) The Government of Karnataka had issued directions under Section 11 of the Electricity Act, 2003 for supply of power to the State Grid and those directions were in force from April, 2010 to June, 2010. For such supply, the rate fixed by the Government was `5/- per unit, subject to approval by this Commission. The Petitioner had paid the tariff of `5/- per unit for the supply of energy by the Respondent during the Section 11 Order period, though the PPA rate was much lower than that. However, subsequently, this Commission clarified that, the generators with the existing PPAs were obliged to supply power at the rates specified in the respective PPAs, to the extent of the supplies committed in the PPAs and the higher rate of `5/- per unit would be applicable, only if the supplies were made over and above the committed capacity in the PPAs. After such clarification, the Petitioner became entitled to recover certain amounts from the

Respondent toward the energy supplied during the Section 11 Order period.

- (iii) The Petitioner was found to be due to the Respondent towards payment of interest, as noted above, to an extent of `24,67,700/-.

In respect of the higher rate of tariff paid for the energy supplied during the Section 11 Order period, the Respondent was found to be due to the Petitioner, an amount of `47,09,412/-. The Petitioner deducted the amount, payable by it to the Respondent, out of the amount due from the Respondent. Therefore, the net amount found to be due from the Respondent to the Petitioner was `22,41,712/-.

- (b) The facts leading to the amount of `21,07,475/-, becoming due to the Petitioner, may be status thus:

- (i) Certain creditors of the Respondent had filed Suits against it, for recovery of amounts, in the City Civil Court, at Chennai and had obtained the money decrees. In the execution of those decrees, Garnishee Orders were issued against the Petitioner, directing it to deposit the amount that would become payable to the Respondent under the PPA, for supply of energy, to the credit of

the different decrees, before the City Civil Court, Chennai. However, on certain representation of the Respondent, stating that the Garnishee Orders were stayed by the Hon'ble High Court of Madras, the Petitioner paid the amounts that were withheld, as per the Garnishee Orders. Subsequently, it was found that, such payments to the Respondent were not authorized under the law and the Petitioner was forced to pay the amounts, which were withheld under the Garnishee Orders, to the creditors of the Respondent as per the Orders of the City Civil Court, Chennai. It is stated that, a sum of `16,46,002 was paid on 13.01.2015 and `4,61,473 was paid on 24.02.2015.

- 7) (a) The Petitioner has produced the documents relating to the previous litigations in respect of the claim of `22,41,712, as noted above.
- (b) The Petitioner has produced a letter dated 27.04.2007 written by the Advocate of the Respondent, representing that, the Garnishee Orders issued by the City Civil Court, Chennai, were stayed by the Hon'ble High Court of Madras, and in view of it, there was no embargo against the Petitioner to release the amounts due to the Respondent, which were withheld under the Garnishee Orders. The Petitioner, after obtaining an undertaking dated 3.10.2007, paid the amounts to the

Respondent, payable under the PPA for supply of energy, which had earlier been withheld under the Garnishee Orders. The Petitioner has also produced the documents to show that, there were warrants issued against it by the City Civil Court, Chennai, for attachment of its movable properties. Therefore, one can accept that, the Petitioner was forced to pay the said amounts to the creditors of the Respondent in different Execution Petitions. The Petitioner claims that, the said amounts totally works out to `21,07,475.

(c) The Petitioner has claimed interest at the rate of 18% per annum on the above-said principal amount due from the Respondent. The PPA provides for interest at the rate of 2% over and above the SBI Prime Lending Rate, for the late payment. Therefore, we are of the considered view that, the interest at the rate of 18% (Eighteen Percent) per annum is on the higher side and it is to be fixed at 9% (Nine Percent) per annum.

- 8) (a) There was a common Order dated 24.03.2011 passed by this Commission in OP No.16/2010 and other connected cases, in which it was held that, the generators with the existing PPAs were obliged to supply power, at the rate specified in the Agreement, to the extent of the supplies committed under the PPAs, etc. Therefore, the claim for `22,41,712, made in this Petition by the Petitioner, is not time-barred

because the claim towards this amount could be executed within twelve years from the Order dated 24.03.2011 of this Commission. In the strict sense, the Petitioner need not have included its claim for this amount in this Petition.

(b) The claim towards the amounts under the Garnishee Orders are well within the period of limitation.

(c) Therefore, the claims made by the Petitioner in this Petition are all well within the period of limitation.

9) For the foregoing reasons, we pass the following:

ORDER

The Respondent shall pay to the Petitioner, the following amounts:

- (i) `22,41,712/- (Rupees Twenty Two Lakhs Forty One Thousand Seven Hundred and Twelve) only, with interest at the rate of 9% (Nine Percent) per annum from 01.04.2011 till the date of realization;
- (ii) `16,46,002/- (Rupees Sixteen Lakhs Forty Six Thousand and Two) only, with interest at the rate of 9% (Nine Percent) per annum from 13.01.2015 till the date of realization; and,

- (iii) `4,61,473/- (Rupees Four Lakhs Sixty One Thousand Four Hundred and Seventy Three) only, with interest at the rate of 9% (Nine Percent) per annum from 24.02.2015 till the date of realization.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/

(D.B. MANIVAL RAJU)
MEMBER