

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION**  
**SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No.40 of 2014**  
**Date of hearing: 18.11.2014**  
**Date of Order: 18.11.2014**

In the matter of : Petition under Section 86 (1) (f) of the Electricity Act, 2003 read with Articles 12 and 17 of the Power Purchase Agreement dated 01.09.2008 seeking:-  
(a) Quashing of wrongful claims of Liquidated Damages of over Rs.952 Crores by Punjab State Power Corporation Limited; and  
(b) Grant of extension of time to Petitioner from the Scheduled COD due to Procurer's Event of Default and events constituting force majeure.

AND

In the matter of: Talwandi Sabo Power Limited, Village Banawala, Mansa-Talwandi Sabo Road, District Mansa, Punjab-151302.

Versus

Punjab State Power Corporation Limited, The Mall, Patiala-147001, Punjab

Present: Smt.Romila Dubey, Chairperson  
Shri Virinder Singh, Member  
Shri Gurinder Jit Singh, Member

For petitioner: Shri Amit Kapur, Advocate,  
Shri Vishal Anand, Advocate,  
Shri Anup Aggarwal,  
Shri Pankaj Chauhan,  
Shri Amit Mittal,  
Shri Jotinder Singh

For PSPCL: Shri M.G.Ramachandran, Advocate  
Shri Avinash Menon, Advocate  
Er. Sanjeev Gupta, Dy. CE / TR-II  
Er. Surinder Kumar, S.E / Projects  
Er. Ajay Gupta, Addl. S.E  
Er. Bhupinderjit Singh, Addl. S.E

**ORDER**

The Commission in its Order dated 22.10.2014 had directed PSPCL and TSPL to give names of two arbitrators of their choice to the Commission to enable it to nominate arbitrator(s) and refer the matter for arbitration of the dispute. The last part of the Order dated 22.10.2014 is reproduced hereunder:-

“ The Commission has carefully gone into the rival contentions of the petitioner (TSPL) and respondent (PSPCL). The Commission is of considered view that the matter requires perusal and scrutiny of record / correspondence to come to any conclusions with regard to disputed facts. As mentioned in the foregoing paras, the petitioner has sought the quashing of claim of Liquidated damages on the grounds that delay in commissioning of the Units of the Power Station as per SCOD has been due to Procurer’s Events of Default and Force Majeure Events. The petitioner has reiterated the same in the written submissions. Per Contra, PSPCL has completely denied any Event of Default on its part and Force Majeure Events in its written submissions. The Commission observes that settlement of the dispute of this nature can be better achieved through arbitration. The parties are, therefore, directed to give names of two arbitrators of their choice by 03.11.2014 for nomination of arbitrator(s) by the Commission for arbitration of the dispute arising out of PPA dated 01.09.2008 regarding Liquidated Damages and extension of SCOD.

The stay on encashment of Bank Guarantee to continue till further orders.

The petition shall be taken up for hearing on 18.11.2014 at 11.30 A.M.”

2. In compliance with the above Order of the Commission, TSPL vide submission dated November 11, 2014 proposed two names of the arbitrators:

1. Dr. Pramod Deo: Ex-Chairman of the Central Electricity Regulatory Commission

2. Sh.Ram Vinay Shahi: Former Secretary to the Government of India in the Ministry of Power

TSPL filed a separate submission also dated November 11, 2014 praying as under:-

- “15. From the above, it is evident that the Hon’ble Commission can grant interim relief both under Section 94 (2) of the Electricity Act, 2003 which also include power to grant relief under Section 9 of the Arbitration and Conciliation Act, 1996 while referring a dispute for Arbitration under Section 86 (1) (f) of the Electricity Act, 2003. The Hon’ble Supreme Court in catena of judgments has held that the Court under Section 9 of the Arbitration and Conciliation Act, 1996 should formulate interim measures to protect the right under Adjudication from the Arbitral Tribunal from being frustrated.

Accordingly, till the matter is finally adjudicated by the Arbitral Tribunal constituted by this Hon’ble Commission, it is respectfully prayed before the Hon’ble Commission to:-

- (a) Allow the interim reliefs as prayed by the Petitioner in its interim Application, and
- (b) Extend the stay granted on encashment of bank guarantee”.

3. TSPL submitted that both Section 94 (2) of the Electricity Act, 2003 and Section 9 of the Arbitration and Conciliation Act, 1996, empowers the Commission to grant interim relief in the matter pending before it while referring a dispute for Arbitration under Section 86 (1) (f) of the Electricity Act, Section 9 of the Arbitration and Conciliation Act, 1996 empowers to grant appropriate orders pending Arbitration before the Award is enforced under Section 36 of the Act. There is no conflict between Section 94 (2) of the Electricity Act, 2003 and Section 9 of the Arbitration and Conciliation Act, 1996. The Apex Court in the case of Sundaram Finance Ltd. Vs NEPC India Ltd observed as under:

“We may here observe that though Section 17 gives the arbitral tribunal the power to pass orders, the same can not be enforced as orders of a Court. It is for this reason that Section 9 admittedly gives the Court power to pass interim orders during the arbitration proceedings”.

Further the Division Bench of Hon’ble Delhi High Court in the case of PTC India Limited Vs Japyee Karcham Hydro Corporation Limited, 2010 ELR (Delhi) 0976 has held as under:-

“64. At this stage, I may also observe here that the powers available to grant any interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, as prayed for by the appellant in OMP No.125/2010, are also available with the Commission under Section 94 of the Electricity Act”.

4. PSPCL has, however, filed an Application dated 10.11.2014 for Adjudication of Disputes by the Commission under Section 86 (1) (f) of the Electricity Act, 2003 instead of reference to Arbitration under provisions of the Arbitration and Conciliation Act, 1996. PSPCL, interalia, submitted that the issues raised in the petition are of complex technical nature which can be effectively adjudicated by an Expert Body such as Commission specially constituted under the Electricity Act, 2003. PSPCL further made submissions to the effect as to how it would be in the financial interest of PSPCL and the consumers in the State if the matter is adjudicated by the Commission instead of reference to arbitration under the Arbitration and Conciliation Act, 1996. PSPCL prayed that the Commission may direct that the above matter will be decided by the Commission on merits.

5. The Commission heard the arguments of PSPCL and TSPL on :

- (i) the application filed by PSPCL for adjudication of the matter by the Commission instead of reference for arbitration and
- (ii) the submission filed by TSPL for extending the stay on encashment of Bank Guarantee till the matter is finally adjudicated by Arbitral Tribunal.

The Commission has also considered the contents of the application and the submission.

6. The Commission had decided vide Order dated 22.10.2014 to refer the matter for arbitration, keeping in view all the facts and circumstances of the matter in view. The Commission, after carefully going through the application dated 10.11.2014 filed by PSPCL, again comes to the same conclusion that the matter be referred for the Arbitration under Section 86 (1) (f) of the Electricity Act, 2003. Accordingly the Commission hereby nominates Shri V.S. Verma, Ex-Member CERC as Sole Arbitrator for Arbitration of Disputes raised in Petition No.40 of 2014 filed by TSPL under the provisions of the Arbitration and Conciliation Act, 1996. Copy of the petition, reply and submissions of the parties during proceedings before this Commission be supplied to the Sole Arbitrator with the letter of nomination. The parties are directed to refer their case to Shri V.S. Verma, Sole Arbitrator, for arbitration under the Arbitration and Conciliation Act, 1996. The Arbitrator would fix his fee / charges under the relevant provisions of Section 31 read with Section 38 of the Arbitration and Conciliation Act, 1996. The Sole Arbitrator shall endeavor to give the Award at the earliest and a copy of the same shall be filed with this Commission for reference and record.

7. As prayed by the petitioner in its submission dated November 11, 2014 and keeping in view the provisions of law as discussed above in para 3 and totality of facts and circumstances of the case, the Commission extends the stay granted on encashment of Bank Guarantee till the matter is finally adjudicated by the Arbitral Tribunal.

The petition is disposed of.

Sd/-

**(Gurinder Jit Singh)**  
**Member**

Sd/-

**(Virinder Singh)**  
**Member**

Sd/-

**(Romila Dubey)**  
**Chairperson**

**Chandigarh**  
**Dated: 18.11.2014**