

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

I.A. No.31 of 2017

in

Petition No. 46 of 2015

Date of hearing: 09.05.2018

Date of Order: 22.05.2018

In the matter of: Petition under Section 86 (1) (f) of the Electricity Act, 2003 for adjudication of disputes under the Power Purchase Agreement dated 11.12.2010 read with the Memorandum of Understanding dated 07.10.2010 between the Petitioner-Punjab State Power Corporation Limited and the Respondent-NTPC Limited.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala.
..... Applicant / Petitioner

Versus

In the matter of: 1. NTPC Limited, NTPC Bhavan, Scope Complex, Core-7, Institutional Area, Lodhi Road, New Delhi-110003.

2. Gidderbaha Power Limited, PSEB Building, The Mall, Patiala-147001

.... Respondents

Present: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member

For PSPCL: Sh. Anand K. Ganeshan, Advocate
Sh. Gurpreet Singh, SE/Projects
Sh. Parveen Jain, ASE/Projects
Sh. Ravi Kathuria, Sr. Xen-TR-4

For NTPC: Ms. Poorva Saigal, Advocate
Sh. J.S.Mann, DGM (Comml.)

**For Gidderbaha
Power Plant:** None

ORDER

PSPCL has filed the present Interlocutory Application (I.A.) praying to permit to initiate proceedings for winding up of Gidderbaha Power Limited (GPL) without prejudice to the rights of PSPCL against NTPC as claimed in Petition No.46 of 2015. The Petition No.46 of 2015 was adjourned sine-die vide Order dated 01.04.2016.

The I.A. was taken up for hearing on admission on 13.02.2018 and after hearing the counsel for the applicant, vide Order dated 12.03.2018, the Commission found it necessary to hear all the parties before taking a view on admission of the I.A. PSPCL was directed to supply the information within two weeks, as under:-

- i) Whether PPA executed between the parties has been approved by the Commission?
- ii) What is the total expenditure incurred by PSPCL?
- iii) Whether total expenditure incurred by the applicant has been passed on to the consumers?

The respondents were directed to file reply to the I.A. within two weeks directing PSPCL to file rejoinder, if any, within next two weeks further directing that NTPC must also appear. PSPCL in compliance of the Order dated 12.03.2018, submitted additional submissions vide memo. no. 6740 dated 27.04.2018 (received on 30.04.2018) and NTPC Limited filed its reply to the I.A. on 08.05.2018.

2. The submissions made by PSPCL in the I.A., in brief, are as under:

- i) That Petition No.46 of 2015 has been filed by PSPCL seeking adjudication of disputes with the NTPC Ltd. and claim for money incurred by PSPCL in relation to GPL in terms of the agreement between PSPCL and NTPC Ltd.
- ii) That GPL was created as the special purpose vehicle which was to be taken over by NTPC Ltd. for establishment of the generating station to be established by GPL within the State of Punjab. However, as on date NTPC has

not taken over the share holding of GPL and the same continues to be owned and controlled by PSPCL. NTPC Ltd has also expressed its unwillingness to take over the share holding of GPL or for the establishment of the generating station.

iii) That during the pendency of the petition, both PSPCL as well as NTPC being Government owned and controlled companies, have been attempting to settle the disputes amicably and for the above purpose , the present petition was adjourned sine die by the Commission pending any progress in the attempt to amicably resolve the disputes.

iv) That there has been an internal committee constituted by PSPCL to have discussions with NTPC and though some discussions have been held, so far no settlement has been concluded. In the mean time NTPC has already decided not to take over the share holding in GPL and establish the project. The disputes are only in relation to the expenditure incurred by PSPCL on the GPL, which NTPC had agreed to reimburse. In the circumstances, the Management of PSPCL has decided to wind up GPL as it was resulting in further expenditure being incurred without any purpose and there is also no possibility of GPL being taken over by NTPC for the establishment of the project.

v) In view of the pendency of Petition No. 46 of 2015 before the Commission, wherein the disputes in relation to the reimbursement of expenses of GPL to be paid by NTPC have been claimed, PSPCL has preferred the present application seeking leave of the Commission to initiate the proceedings for winding up of GPL. Such winding up of GPL would not affect the expenditure already incurred by PSPCL in GPL, which is claimed by PSPCL against NTPC.

vi) That while the winding up process would be in terms of the provisions of the Companies Act, 2013, the present application is filed seeking leave to initiate the appropriate proceedings for winding up of GPL without prejudice to the rights of PSPCL against NTPC in relation to the claims preferred on the expenditure

incurred in GPL. The expenses incurred in the winding up process would also form part of the claim of PSPCL against NTPC. In view of the above, it is prayed to:

- a) permit the applicant/ PSPCL to initiate proceedings for winding up of GPL, without prejudice to the rights of PSPCL against NTPC as claimed under the present petition; and
- b) pass such other further order as the Commission may deem just in the facts of the present case.

3. The additional submissions made by PSPCL vide letter dated 27/30.04.2018, in brief, are as under:

i) That PPA has not been approved by the Commission. The grant of approval is under section 86 (1) (b) of the Electricity Act, 2003 which is an essential requirement for PSPCL to purchase electricity and pay tariff and pass on the said tariff to the consumers in the State of Punjab. However, the present petition is not in relation to power purchase, but only for the reimbursement of expenses incurred by PSPCL on GPL which was agreed to be borne by NTPC in the PPA. The claim has no relation to the tariff or the power to be purchased. In fact, if the claim of PSPCL was in relation to tariff, the said claim would fall within the scope of section 79 (1) (f) of the Electricity Act, 2003, which covers any matter in relation to section 79(1) (a) to (d). The present claim has no relation to clauses (a) to (d) of Section 79 (1) of the Electricity Act, 2003. Therefore, the approval of the PPA by the Commission under section 86 (1) (b) would not be a precondition for the enforcement of the claim by PSPCL against NTPC as sought for in the present petition.

ii) The total expenditure incurred by PSPCL on the project as on 31.03.2017 is Rs.12,31,09,810.16. The expenditure for the year 2017-18 is Rs.74,510.19 subject to reconciliation and audit of the expenses. In addition to the above, GPL

has neither paid nor provided for the interest on loan given by PSPCL for the period 01.06.2011 to 31.03.2017 as per the decision of the Board of Directors of GPL taken in its 30th meeting held on 27.03.2012, which otherwise works out to be Rs.14,13,38,366/-. The amount on this account for the period of 01.04.2017 to 31.03.2018 shall be intimated after finalization of balance sheet.

iii) PSPCL has given a total loan of Rs.12, 20,44,211/- to GPL, out of which Rs. 12,01,00,000/- stands booked under G.H. 27.300 and Rs.19,44,211/- was booked under G.H. 28.220, which was released by PSPCL out of its revenue. Interest on this loan has accrued till May, 2011. From June, 2011 and onwards, no interest is received as per the decision of the Board of Directors of GPL in the 30th meeting held on 27.03.2012. No expenditure on the money paid to GPL has been passed on to the consumers or otherwise claimed in the ARR by PSPCL.

4. The submissions made by NTPC Ltd in reply to I.A. in brief, are as under:

i) That without admitting to any of the allegations made by PSPCL in the IA No. 31 of 2017, the matter relating to GPL, as a corporate entity is entirely for PSPCL to deal with. NTPC never acquired or became a shareholder of GPL. NTPC never nominated any Director on the Board of GPL and did not manage or participate in the corporate affairs of GPL at any point of time.

ii) That the corporate entity – GPL was envisaged to be a special purpose vehicle for establishment of a power project in the State of Punjab as per the proposal deliberated and discussed between NTPC and PSPCL together with the Government of Punjab. The proposal has not fructified. NTPC has, therefore, no involvement in the corporate entity GPL. It is entirely for PSPCL to decide on the aspect of winding up of GPL and to decide steps to be taken for the said purpose.

iii) That the Power Purchase Agreement (PPA) was entered into between NTPC and PSPCL on 11.12.2010. The said PPA envisaged NTPC to acquire GPL, set up as a Special Purpose Vehicle by PSPCL for the implementation of the power project. However, as the proposal was not taken forward, NTPC never acquired the shares of GPL or otherwise any control in the management and conduct of the affairs of GPL.

iv) That the issue of taking permission from the Commission for winding up GPL is entirely for PSPCL to decide. NTPC is not in any way responsible or liable for the same.

v) That NTPC is not liable to pay any amount either by way of reimbursement or otherwise any expenditure incurred by PSPCL in establishing GPL or in managing the affairs of GPL. NTPC is filing the present reply without prejudice to its preliminary objections contained in the reply dated 11.09.2015 challenging the maintainability of the petition qua NTPC before this Commission.

Observations and the decision of the Commission:

5. PSPCL filed petition no. 46 of 2015 under section 86 (1)(f) of the Electricity Act, 2003, for adjudication of disputes under the power purchase agreement dated 11.12.2010 read with memorandum of understanding dated 07.10.2010 between PSPCL and NTPC. The Petition No. 46 of 2015 was adjourned sine die on the request of the parties vide order dated 01.04.2016 to enable the parties to reach amicable settlement of the matter. PSPCL has filed the present IA seeking permission of the Commission to initiate proceedings for winding up of GPL without prejudice to the rights of PSPCL against NTPC as claimed in Petition No. 46 of 2015. It has been submitted by NTPC in its reply to the IA that NTPC has no involvement in the corporate entity GPL and it is entirely for PSPCL to decide on the aspect of winding up of GPL and to decide steps to be taken for the said purpose and the issue of taking GPL to winding up or any permission is to be granted by the Commission for the said purpose, is entirely

for PSPCL to decide. NTPC is not in any way responsible or liable for the same. During hearing, the Counsel for the NTPC reiterated its submissions.

After hearing both the parties, the Commission decides that without prejudice to the rights of the parties in Petition No.46 of 2015, PSPCL may take suitable decision / actions to initiate proceedings for winding up of GPL and consult the Government of Punjab in this regard. I.A. No. 31 of 2017 is disposed of accordingly.

The Commission further observes that the parties may endeavour to settle the disputes amicably at the earliest as the Petition No.46 of 2015 is lying sine die since 01.04.2016.

**Sd/-
(S.S. Sarna)
Member**

Chandigarh
Dated: 22.05.2018

**Sd/-
(Kusumjit Sidhu)
Chairperson**

