

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION

SITE NO. 3, BLOCK B, SECTOR 18-A, MADHYA MARG, CHANDIGARH

**IA No. 07 of 2023
in Petition No. 63 of 2022
Date of Order: 18.08.2023**

Application seeking directions for reference of the dispute in Petition No. 63 of 2022 to Arbitration in terms of the Article 17.3.2 of the PPA dated 01.09.2008 read with Regulation 20 of PSERC (Conduct of Business) Regulations, 2005 and Section 86 (1) (f) & 158 of the Electricity Act, 2003.

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

...Petitioner/Applicant

Versus

1. Punjab State Load Dispatch Centre, through its Chief Engineer, SLDC Building, 220 KV Grid Station, PSTCL Ablawal, Patiala, Punjab-147001.
2. Punjab State Power Corporation Limited, through its Chief Engineer, (PP&R), D-3 Shed, Shakti Vihar, PSPCL, Patiala, Punjab-147001.
3. Punjab State Transmission Corporation Limited, through its Chief Engineer, The Mall, PSEB Head Office, Patiala, Punjab-147001.
4. Commercial and Metering Committee, through its Chief Engineer, PSLDC, SLDC Building near 220 KV Grid Station, PSTCL Ablawal, Patiala-147001, Punjab.

..Respondents

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

TSPL: Sh. Amit Kapur, Advocate
PSPCL: Ms. Poorva Saigal, Advocate
PSLDC &
PSTCL: Sh. Anand K Ganesan, Advocate

Order

1. Talwandi Sabo Power Limited (TSPL) has filed the present application in Petition No. 63 of 2022 for referring its petition/dispute to Arbitration in terms of Article 17.3.2 of the PPA, read with Regulation 20 of PSERC (Conduct of Business) Regulations, 2005 and read with Section 86(1)(f) & 158 of the Electricity Act, 2003. It has been submitted that:

1.1 On 01.10.2022, TSPL has filed the Petition No. 63 of 2022 under Section 33 read with Section 86 of the Electricity Act and Regulation 14.1.6 of Punjab State Grid Code Regulations challenging the findings returned by Commercial and Metering Committee (**CMC**) in the Minutes of its 20th and 21st Meeting dated 19.05.2020 and 24.06.2020 with respect to revision of TSPL's Declared Capacity in the Monthly State Energy Account (**SEA**) prepared by Punjab State Load Dispatch Centre (**PSLDC**) for various months during the outage period between 2015 to 2019. The petition was admitted vide Order dated 02.12.2022, with directions that pleadings be completed in the matter. Pursuant thereto, after multiple opportunities, the Respondents have filed their replies as late as 21.03.2023.

1.2 The Commission is vested with the power to refer any dispute for arbitration in terms of Article 17.3.2 of the PPA read with the Regulation 20 of the COB Regulations 2005 and Section 86(1)(f) & 158 of the Electricity Act, 2003. TSPL, placing reliance on

various judgments passed by the Hon'ble Supreme Court, submitted that it is a settled position of law that the Commission has been elevated to the status of a substitute for the civil court in respect of all disputes between the licensees and generating companies and that whenever there is a dispute, it can be adjudicated by the State Commission or the arbitrator appointed by it. TSPL also submitted that the Commission had previously referred many disputes to arbitration viz. in petition nos. 48 of 2012, 34 of 2015, 65 of 2013 & 33 of 2015 and in petition no. 13 of 2017. It was also submitted that the possibility of reference to arbitration by the Commission under the Electricity Act, 2003 is not contingent upon the consent being given by the parties for such reference to be made.

1.3 The petition requires adjudication by experts since the issue raised relate to tripping / blackout of units along with the capacity charges to be paid by PSPCL, which involves a detailed analysis of documents, evidence, reports placed by TSPL and the respondents. Considering the objective and scheme of time-bound adjudication of claims envisaged by the Electricity Act, 2003, particularly in matters which have an impact on tariff and also on carrying cost/late payment surcharge, it may be relevant to adopt the principles enunciated by the Hon'ble Supreme Court in *Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd & Ors.* (2010) 8 SCC 24 ("Afcons Infrastructure Judgment):

*"26. Section 89 starts with the words "**where it appears to the court that there exist elements of a settlement**". This clearly shows that cases which are not suited for ADR process should not be referred under*

Section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process. Having regard to the tenor of the provisions of Rule 1-A of Order 10 of the Code, the civil court should invariably refer cases to ADR process. Only in certain visualizes excluded categories of cases, it may choose not to refer to an ADR process. Where the case is unsuited for reference to any of the ADR processes, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under Section 89 of the Code. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under Section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other cases reference to ADR process is a must.

...

43. We may summarize the procedure to be adopted by a court under section 89 of the Code as under:

- a) *When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.*
- b) *The court should first consider whether the case falls under any of the category of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds the case falls under any excluded category, it should record a brief order referring to the nature of the case and why it is not fit for reference*

to ADR processes. It will then proceed with the framing of issues and trial.

c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

.....”

1.4 The words “refer any dispute for arbitration”, appearing in Section 86(1)(f) of the Electricity Act, 2003 have been used by the legislature for a purpose and the objective sought to be thereby achieved being similar to the jurisprudence behind Section 89 of the CPC. It is submitted that, the Rule of Law mandates that where there is an arbitrable dispute and an arbitration clause, the mandate under Section 89 CPC read with Section 8 (Power to refer parties to arbitration where there is an arbitration agreement) of the Arbitration and Conciliation Act, 1996 is bound to be followed. The extracts of the Section 8 of the Arbitration and Conciliation Act, 1996 are set forth below:

“8.Power to refer parties to arbitration where there is an arbitration agreement.—

- (1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*
- (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.*
- (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”*

1.5 In view of the above, it is evident that the Commission has the power to refer the present Petition/dispute for arbitration. The Applicant therefore prays to:

- (a) Allow the present Application and refer the present Petition/dispute for arbitration in terms of Article 17.3.2 of the PPA read with the Regulation 20 of COB Regulations 2005 and Section 86(1)(f) & 158 of the Electricity Act, 2003; and
- (b) Pass any such further orders that this Hon'ble Commission may deem fit in the present facts and circumstances.

2. The application was taken up for hearing on 17.05.2023 wherein it was observed by the Commission that the Petitioner was allowed vide previous interim order dated 28.03.2023 to file a rejoinder to the reply filed by the respondents in Petition No. 63 of 2022. However the Petitioner, instead of filing the rejoinder, has filed the present I.A. seeking to refer its petition for arbitration. The Ld. Counsel of the respondents firmly opposed the I.A. and requested for time to file a reply thereto. Thereafter, PSPCL and PSLDC/PSTCL filed their replies/objections to the IA on 09.06.2023 and 28.06.2023

respectively and TSPL submitted its rejoinders thereon on 14.07.2023.

3. Submissions by PSPCL

PSPCL, while objecting to the maintainability of the I.A. has submitted that:

3.1 Without prejudice to the submissions that all disputes under the PPA are subject to adjudication by the Commission, it is submitted that even Article 17.3.1 of the PPA unequivocally provides that the disputes which in any matter 'relate to any change in Tariff or claims made by any party which partly or wholly relate to any change in the Tariff or determination of any of such claims which could result in change in the Tariff' shall be submitted to the Appropriate Commission. The intention of the parties in signing the PPA is clear. Any tariff related issues are always to be adjudicated by the Commission. This is fundamentally based on the aspect that any resolution of such dispute will have a direct impact on consumer tariff and consumer interest. In a bilateral arbitration under the Arbitration and Conciliation Act, 1996 the Consumer cannot be a party. The prayers sought by TSPL in the present petition itself establish that the determination of the present subject matter of dispute shall have an impact on the capacity charges which is a component of tariff payable to TSPL in terms of the Schedule 7 of the PPA.

3.2 Further, the judicial discretion of the Commission to decide whether the dispute is to be referred to Arbitration or not is to be based on established parameters. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case *Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.* (2008) 4 SCC

755, providing instances wherein the Commission may not decide the dispute itself and may refer it for Arbitration by an arbitrator appointed by it.

3.3 The dispute is not merely a lis between TSPL and PSPCL as multiple parties are involved in the present case. The other parties involved are PSLDC, PSTCL and the CMC. The adjudication by the arbitrator can only deal with a concern of the two parties and not the concerns, stakes and interests of other parties including the consumers at large. Further, while stating that it would have wide implications including an impact on the consumers of the State, PSPCL has cited the Hon'ble Supreme Court in *Vidya Drolia and others v. Durga Trading Corporation*, (2021) 2 SCC1 laying down the principles as to the arbitrability of a dispute.

3.4 TSPL has placed selective reliance on the judgement passed by the Hon'ble Supreme Court in *Afcons Infrastructures Ltd. Vs Cherians Parkey Construction Co. (P) Ltd.* [(2010) 8SCC 24]. The Hon'ble Supreme Court, while dealing with the importance of Alternative Dispute Mechanism, has also observed that suits which involve public interest or interest of numerous persons are not suitable for an alternate dispute redressal process.

3.5 TSPL is challenging the findings given by CMC. The CMC is a body constituted under the State Grid Code (SGC) Regulations and any dispute pertaining to the same is required to be adjudicated by the Commission in terms of the said Regulations. Further, the present Petition No. 63 of 2022 has also been filed invoking Section 33 of the Electricity Act, 2003. In terms of Section 33 (4), it is only the Commission that can exercise and

settle issues in relation to the directions of the State Load Despatch Centre.

3.6 The intention of TSPL, in filing the present application at a belated stage is a dilatory tactic and an abuse of the process of law. The request or application, if any, ought to have been made by TSPL in the petition itself or at least during the admission hearing before the Commission. The above application has been filed when the pleadings are almost complete. The only pleading which is yet to be filed is the Rejoinder by TSPL, the time for which expired on 11.04.2023. However on, 12.05.2023, on the pretext of proposing a 'speedy resolution', TSPL has filed the present application. The delay from 21.05.2021 i.e. the filing of Petition No. 31 of 2021 till date is solely attributable to TSPL.

4. Submissions by SLDC and PSTCL

SLDC and PSTCL while objecting to the maintainability of the I.A have submitted that:

4.1 As per Article 17.3.1 and 17.3.2 of the PPA dated 01.09.2008 signed between TSPL and PSPCL, if a dispute is related to 'tariff', it can only be referred to the appropriate commission and, cannot be resolved by way of arbitration. In the present Petition, the Petitioner has prayed before the Commission to direct PSPCL to pay Capacity Charges and the Late Payment Surcharge. It is stated that the 'Capacity Charge' is one of the components of tariff. It is stated that the orders of the Commission as mentioned by the Petitioner wherein the matters were referred to arbitration were of a different nature than the dispute which relates to the present Petition.

4.2 In terms of the Section 8 of the Arbitration and Conciliation Act, 1996, a dispute cannot be referred for arbitration if a party applies for the same after 'the date of submitting its first statement on the substance of the dispute'. The Petitioner ought to have prayed in the Petition for referring the matter to arbitration, it cannot seek reference to the arbitration at this stage when the pleadings are almost complete.

4.3 The Petitioner has wrongly interpreted the judgment dated 26.07.2010 of the Hon'ble Supreme Court in *Afcons Infrastructure Ltd. & Anr. v. Cherian Varkey Construction Co. (P) Ltd. & Ors. (2010) 8 SCC 24*. The judgment, in fact, states that a suit cannot be referred to arbitration unless all the parties to the suit agree for such a reference. As such, the present dispute cannot be referred to arbitration since the answering Respondent does not agree to the same.

5. TSPL filed its rejoinder to the replies/objections filed by PSPCL and PSTCL/PSLDC, reiterating its stands taken in the I.A. After hearing all the parties on 27.07.2023, the order on the maintainability of the IA was reserved.

6. Observations and the decision of the Commission

The Commission has examined the submissions and arguments professed by the parties. The Applicant is seeking a reference of its Petition No. 63 of 2022 to Arbitration in terms of the Article 17.3.2 of the PPA dated 01.09.2008 read with Regulation 20 of PSERC (Conduct of Business) Regulations, 2005 and Section 86 (1) (f) & 158 of the Electricity Act, 2003. The Applicant has cited various judgments passed by the Hon'ble Supreme Court holding that the Commission has been elevated to the status of a substitute for the civil court in

respect of all disputes between the licensees and generating companies and that whenever there is a dispute, the same can be adjudicated by the State Commission or the arbitrator(s) appointed by it. The Applicant has also submitted that the Commission had previously also referred many disputes to arbitration. Whereas, the respondents, without disputing the powers of the Commission conferred under Sections 86(1)(f) and 158 of the Electricity Act to refer any dispute to arbitration, are objecting to the Applicants' prayer on various other counts. The Commission examines the same as under:

6.1 The Applicant is praying for reference of its Petition No. 63 of 2022 to arbitration in terms of Article 17.3.2 of the PPA dated 01.09.2008. However, the respondents are objecting to the same with the contention that the same is not permissible in terms of the PPA as the impugned dispute(s) has a direct co-relation to the tariff payable by PSPCL. It was also contended that SLDC, PSTCL and CMC are not parties to the PPA and thus cannot be subjected to the provisions of the PPA and thus arbitration is not an available option.

The Commission refers to the Article 17.3 of the PPA dated 01.09.2008, which reads as under:

"17.3 DISPUTE RESOLUTION

17.3.1 Where any Dispute arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, such Dispute shall be submitted to adjudication by the Appropriate Commission.

17.3.2 If the Dispute arises out of or in connection with any claims not covered in Article 17.3,1, such Dispute shall be resolved by arbitration”

As is evident, Article 17.3.2 of the PPA cited by the Petitioner provides that only a dispute arising out of or in connection with any claims not covered in Article 17.3.1 (i.e. the claims not resulting in any change in the Tariff) shall be resolved by arbitration. The Commission notes that one of the prayers made by the Petitioner in the petition is as under:

“(e) Direct PSPCL to pay Capacity Charges for the months during the outage period in terms of the actual DC/Deemed Availability declared by TSPL for the Project including Late Payment Surcharge from the date of billing till the date of actual payment by PSPCL.”

Thus, it is evident, that the dispute involved herein also pertains to the payment of capacity charge which is a component of Tariff. Moreover, its disputes with SLDC/PSTCL and CMC who are not signatories to the PPA cannot be subject to arbitration under the provisions of the PPA with PSPCL.

6.2 The Commission also refers to the Regulations 20 of PSERC (Conduct of Business) Regulations, which reads as under:

“20. Adjudication/Arbitration:-

(1) The adjudication or arbitration of disputes which under the Act are within the scope and jurisdiction of the Commission may be commenced on an application made by any of the parties to the dispute.

(2) The Commission shall issue notice to the concerned parties to show cause as to why the dispute between the parties should not be either adjudicated by the Commission or settled through arbitration.

(3) The Commission may, after hearing the parties to whom notices have been issued and if satisfied that no reason or cause has been shown against the request for adjudication or for arbitration, pass an order directing that the disputes shall be adjudicated by the Commission or that the Commission shall refer the matter to arbitration of a person or persons to be nominated by the Commission.”

As is evident, the above referred Regulation 20(3) mandates that the Commission may pass an order directing that the disputes to be adjudicated by the Commission or through arbitration only after hearing the parties and only if it is satisfied that no reason or cause has been shown against the request for adjudication or for arbitration. Accordingly, the Commission also examines the pleas raised by the Applicant for making its case for arbitration and the reasons or causes shown against the same by the respondents, as under:

6.2.1 Objectives and scheme of time bound adjudication of claims:

Petitioner has submitted that it filed Petition No. 63 of 2022 on 01.10.2022 challenging the findings returned by CMC in the Minutes of its 20th Meeting dated 19.05.2020 and 21st Meeting 24.06.2020 with respect to the Declared Capacity of its project considered in the Monthly SEA prepared by PSLDC for various months during the period between 2015 to 2019. Its' plea is that, after the Commission vide Order dated 02.12.2022 admitted the petition and directed that pleadings be completed in the matter, the respondents, after multiple opportunities, filed their replies as late as 21.03.2023. It was further pleaded that the present petition requires adjudication by the experts since it relates to the tripping/ blackout of units (which are highly technical in nature) and

consequent payment of capacity charges, which involves a detailed analysis of documents, evidence, reports placed by the parties.

On the other hand, the respondents are contending that the conduct of TSPL in filing the present application, at a belated stage when the pleadings are almost complete, is a dilatory tactic and an abuse of the process of law. The only pleading which is yet to be filed before the Commission is the rejoinder by the Petitioner, the time for which also expired on 11.04.2023. The request or application, if any, ought to have been made in the petition itself or at least during the admission stage of the petition.

The Commission refers to the Hon'ble Supreme Court Judgment in the case of GUVNL Vs Essar Power Ltd (2008) 4 SCC 755, cited by the parties. Therein, while holding that Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating companies and that only the Commission or arbitrator(s) nominated by it can resolve such a dispute, the Hon'ble Supreme Court has also observed as under:

“30..... It is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator..... There are various reasons why the State Commission may not decide the dispute itself and may refer it for arbitration by an arbitrator appointed by it. For example, the State Commission may be overburdened and may not have the time to decide certain disputes itself, and hence such cases can be referred to an arbitrator. Alternatively, the dispute may involve some highly technical point which even the State

Commission may not have the expertise to decide, and such dispute in such a situation can be referred to an expert arbitrator.....”

The Commission notes that the Hon'ble Supreme Court, while holding that It is in the discretion of the State Commission whether the dispute should be decided itself or it should be referred to an arbitrator has observed that the State Commission may refer the cases to an arbitrator if it is overburdened and may not have the time to decide certain disputes itself, or when the dispute involve some highly technical point which even the State Commission may not have the expertise to decide. The Commission is of the view that the Applicants' case does not qualify on any of these counts. Moreover, as rightly pointed out by the respondents, the pleadings in the matter are almost complete, save for submission of rejoinder by the Petitioner himself, and the matter is scheduled for final arguments thereafter. Referring the matter to arbitration at this stage would actually delay the resolution of the dispute rather than speed it up as contended by the Petitioner.

6.2.2 Delay in filing of Application for Arbitration

The respondents have also contended that in terms of Section 8 of the Arbitration and Conciliation Act, 1996, a dispute cannot be referred for arbitration if a party doesn't apply for the same at the first instance itself i.e. by the date of submitting its first statement on the substance of the dispute. The Commission refers to the relevant extract of Section 8 of the Arbitration and Conciliation Act, 1996, which reads as under:

“8.Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”

As is evident, under the Arbitration Act, power to refer parties to arbitration is to be exercised if a party so applies not later than the date of submitting his first statement on the substance of the dispute. The Commission observes that in the present case, no such intent was expressed by the Petitioner either in its petition filed on 01.10.2022, or in the averments made by its counsel in the hearing for admission held on 30.11.2022. It was filed only on 12.05.2023, after respondents PSLDC/PSTCL and PSPCL filed their replies on 17.02.2023 and 21.02.2023 respectively. Even at that stage its Counsel requested for time to file a rejoinder to the replies filed by the respondents in the hearing held on 22.03.2023. Only as an afterthought, instead of filing a rejoinder as requested by Counsel for Petitioner in the hearing on 22.03.2023, the present IA for referring the dispute to arbitration was filed.

6.2.3 Issue of consent/willingness of the parties:

The Applicants' plea is that the reference to arbitration by the Commission under the Electricity Act, 2003 is not contingent upon the consent being given by the parties. On the other hand, the Respondents have contended that the Applicant has wrongly interpreted the judgment dated 26.07.2010 of the Hon'ble Supreme Court in *Afcons Infrastructure Ltd. & Anr. v. Cherian*

Varkey Construction Co. (P) Ltd. & Ors. (2010) 8 SCC 24. It was contended that, in fact, the judgment states that a suit cannot be referred to arbitration unless all the parties to the suit agree for such reference. As such, the present dispute cannot be referred to arbitration since the answering Respondents do not agree for the same.

The Commission refers to the Hon'ble Supreme Court Judgment in the case of *Afcons Infrastructure Ltd Vs Cherians Parkey Construction Co. Pvt. Ltd (2010) 8 SCC24*, which reads as under:

"17. Section 89 starts with the words "where it appears to the court that there exist elements of a settlement". This clearly shows that cases which are not suited for ADR process should not be referred under section 89 of the Code. The court has to form an opinion that a case is one that is capable of being referred to and settled through ADR process..

.....

24. If there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under section 89 of the Code. This is evident from the provisions of AC Act. A court has no power, authority or jurisdiction to refer unwilling parties to arbitration, if there is no arbitration agreement. This Court has consistently held that though section 89 of the Code mandates reference to ADR processes, reference to arbitration under section 89 of the Code could only be with the consent of both sides and not otherwise.

.....

32. The Court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code:

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent.

As is evident, the Hon'ble Supreme Court in this judgment has emphasised that the willingness of the parties is a pre-requisite for referring any matter for arbitration.

6.2.4 Respondents have also contended that TSPL has filed the Petition No. 63 of 2022 under Section 33 of the Electricity Act, 2003, challenging the actions of the PSLDC and findings of the Commercial and Metering Committee (CMC) constituted under the State Grid Code Regulations (SGC), which can only be adjudicated by the Commission in terms of Section 33(4) of the Act and Regulation 1.10 of the SGC.

The Commission refers to the relevant provisions of the Electricity Act and State Grid Code Regulations, which read as under:

Electricity Act

“33 (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

.....
(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1) , it shall be referred to the State Commission for decision.”

State Grid Code Regulations

“1.10 Dispute Settlement Procedures

1.10.1 *If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State Grid or in relation to any direction given under Regulation 1.12.1, it shall be referred to the Commission for decision.*

Provided that pending the decision of the Commission, the directions of SLDC shall be complied with by the Users.

1.10.2 *In the event of any dispute regarding interpretation of any provision of the State Grid Code between any User and SLDC/STU, the matter may be referred to the Commission for its decision. The Commission's decision shall be final and binding and may have retrospective application. During the intervening period, interpretation of SLDC/STU shall apply unless otherwise directed by the Commission.*

1.10.3 *In the event of any conflict between any provision of the State Grid Code and any contract or agreement between STU and Users or between Users, the provision(s) of the State Grid Code will prevail.”*

As is evident, specific provisions exist in the Electricity Act and the SGC for resolution of disputes arising out of any direction given by the SLDC and any provision of the State Grid Code between any User and SLDC/STU. However, the Applicant is praying for seeking reference of its Petition to Arbitration in terms of the Article 17.3.2 of the PPA dated 01.09.2008 read with Regulation 20 of PSERC (Conduct of Business) Regulations, 2005 and Section 86 (1) (f) & 158 of the Electricity Act, 2003 only without invoking the relevant Section/Regulation of the Act/SGC Regulations dealing with dispute resolution between the User (Applicant) and SLDC/STU/CMC.

6.2.5 The respondents have further contended that, the dispute herein is not merely a lis between TSPL and PSPCL as multiple parties are involved in the present case. The other parties involved are PSLDC, PSTCL and the CMC. The adjudication by the arbitrator can only deal with concern of the two parties who are signatories to the PPA and not the concerns, stakes and interests of other parties including the consumers at large. Therefore, the present subject matter of dispute ought not be referred to Arbitration.

In this regard, the Commission refers to the Hon'ble Supreme Court Judgment in the case of Vidya Drolia & Ors Vs Durga Trading Corporation (2021) 2 SCC1, cited in the matter, wherein it has been held that:

“76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

76.1.(1)

76.2.(2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

.....”

The Commission observes that the Hon'ble Supreme Court has held that the subject-matter of the dispute would be non-arbitral when it affects third-party rights and mutual adjudication would not be appropriate and enforceable.

The Petitioner fails on all counts to establish a case for referring the present Petition/dispute to arbitration as per the detailed analysis and observations above. Thus, the Commission is

constrained to disallow the IA filed by the Petitioner for referring the matter to arbitration.

In light of this decision, the Petitioner is directed to file its rejoinder as per the interim order dated 28.03.2023 within two weeks with a copy to the respondents (through hard copy & soft copy).

The case is fixed for further hearing on 04.10.2023.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh

Dated:18.08.2023

