

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

ThiruM.Chandrasekar Chairman
Dr.T.PrabhakaraRao Member
and
Thiru.K.Venkatasamy Member (Legal)

D.R.P. No.7 of 2014

Binaguri Tea Company Pvt. Ltd.
238 A, A.J.C. Bose Road
4th Floor, Kokkata – 700 020.

... Petitioner
(ThiruRahul Balaji
Advocate for the Petitioner)

Vs

1. TANGEDCO
Rep. by its Chairman Cum Managing Director
No.144, Anna Salai
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
Chennai – 600 002.

....Respondents
(Thiru M.Gopinathan
Standing Counsel for the Respondents)

**Dates of hearing :29-01-2014; 30-01-2014; 28-04-2014;
13-08-2019; 17-09-2019; 22-10-2019
and12-11-2019**

Date of order : 25-02-2020

ORDER

The D.R.P.No.7 of 2014 came up for final hearing before the Commission on 12-11-2019 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

ORDER

1. Prayer in D.R.P. No. 7 of 2014:-

The prayer of the petitioner in this D.R.P.No.7 of 2014 is to direct the Respondent to pass an order directing the respondents to forthwith make payment of a sum of Rs.64,92,967.29 being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and further direct the respondents to pay interest @ 1% per month for the future period for any delay in settlement of invoices beyond the period of 30 days from the date of invoice and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

2. Facts of the Case:-

The petition is filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.64,92,967.29 being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and direct the Respondents to pay interest @1% per month for any delay in settlement of invoices beyond the period of 30 days.

3. Contentions of the Petitioner:-

3.1. The petitioner is primarily engaged in the business of production, manufacture and sale of tea and also in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is having Wind Power Generators to the tune of 3.0 MW in the State of Tamil Nadu.

3.2. The petitioner has established Wind Power Generation projects in Kasthurirangapuram and Urumangulam villages at Radhapuram Taluk in Tirunelveli District in the State of Tamil Nadu with a total capacity of 3.0 MW. The power generated by these units is being sold to the 1st respondent under the terms of agreements executed by the petitioner with the TANGEDCO.

3.3. The following are the details of the location of its Windmills whose date of commissioning, capacity and HT SC Nos. are given below:-

No.	Location of Windmill & Jurisdictional TANGEDCO Circle	Capacity of Windmill	HT SC. No.	Date of Commissioning
1	Kasthurirangapuram Village, Radhapuram Taluk, Tirunelveli District Tirunelveli Electricity Distribution Circle, TANGEDCO	1.5 MW	2760	23-03-2009
2	Urumangulam Village, Radhapuram Taluk, Tirunelveli District Tirunelveli Electricity Distribution Circle, TANGEDCO	1.5 MW	2895	06-08-2009

3.4. The power generated by these units is being sold to TANGEDCO under the respective agreements. The petitioner is raising Invoices from time to time in accordance with the Contracts and Tariff Orders. However for the past few years, the payments that have been received from TANGEDCO are being consistently delayed. Even when payments are made belatedly, they are being made without any interest for such delay. Such non-payment of interest is a denial of a valuable right conferred by specific Tariff Orders and the judgment of the Hon'ble APTEL.

3.5. The TANGEDCO took the position that only for windmills covered by Tariff Order No.1 of 2009, there is a requirement for paying interest. This resulted in the Indian Wind Power Association filing a petition before the Commission which upheld the right of all wind generators irrespective of the date of commissioning to receive interest on delayed payments at the rate of 1% per month. The said judgment was upheld by the Hon'ble APTEL in its judgment in Chairman, TNEB & Anr. V. Indian Wind Power Association and Ors. in Appeal No.11 of 2012 dated 17-04-2012 and held as follows:-

“The wind power generators are entitled for payment of interest on delayed payment made by the appellant for the purchase of the power from the generators.”

3.6. Therefore all Wind Generators are entitled to interest on delayed payment @1% per month for every month's delay from the due date. Only a 30 days time limit is provided for payment and any delay beyond that will have to be made with interest @1% per month

3.7. In light of the specific provision contained in Tariff Order No. 1 of 2009 on interest in delayed payments, which is applicable to all WEGs commissioned after 19.09.2008 such as those of the petitioner, and because of the ruling of the Hon'ble APTEL in Appeal 11 of 2012, the petitioner is entitled to interest on delayed payments including those payments which have already been remitted.

3.8. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA and the petitioner has received payments against invoices for the period upto March 2013. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the order of the Hon'ble APTEL and the provisions of the Tariff Order No.1 of 2009 and the terms of the agreement.

3.9. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.64,92,967.29 towards interest on delayed payments alone.

3.10. The substantial delays in making payments by the respondent have caused severe difficulties for the petitioner in meeting the financial obligations towards banks and financial institutions.

3.11. The interest on delayed payments is much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The

delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

3.12. The petitioner had sent letters of demand on 21st June 2013 and 25th June 2013 seeking payment of interest on delayed payments. But, there has been no response or positive action from the respondents. The respondents have been making ad-hoc payments from time to time which are substantially delayed and even while making such admittedly belated payment, they have failed to pay interest on such delayed payments. Therefore, it has become necessary to file this petition.

3.13. The petitioner is paying a substantial court fee of Rs.64,930.00 to file the instant petition for recovery of interest of delayed payments despite being entitled to the same as per the terms of the EPA, order of APTEL in Appeal No.11 of 2012 and Tariff Order No.1 of 2009 issued by this Commission.

4. Hearing held on 13-08-2019:-

In the hearing held on 13-08-2019, the Counsel for TANGEDCO offered to pay interest at 6% per annum for delayed payments and the case was adjourned to 17-09-2019 for consent of the petitioner.

5. Hearing held on 17-09-2019:-

In the hearing held on 17-09-2019, the petitioner counsel was directed to file Memo for acceptance of 6% of interest on the payment from TANGEDCO, since

the petitioner was willing to the offer made by the respondents with regard to the interest.

6. Hearing held on 22-10-2019:-

At the request of the petitioner's counsel, the case was adjourned to 12-11-2019 for filing Memo of Acceptance of the offer made by TANGEDCO.

7. Hearing held on 12-11-2019:-

The petitioner has filed a Memo accepting the payment of interest on belated payments at 6% per annum. In the affidavit, the petitioner has inter *alia* stated as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month shall be paid.
- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards costs of this D.R.P.
- (e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable

at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

8. Findings of the Commission:-

8.1. The petitioner in this petition is to direct the respondent to forthwith make payment of a sum of Rs.64,92,967.29 being interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and further direct the respondents to pay interest @ 1% per month for the future period for any delay in settlement of invoices beyond the period of 30 days from the date of invoice and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner

8.2. The petitioner has also prayed to direct the respondent to bear the cost of instant petition including court fees and legal expenses and make payment of the said sum to the petitioner. During the hearing on 12-11-2019, SelviTanushreeArvind, Junior to Thiru Rahul Balaji, Advocate appeared for the petitioner and filed an affidavit for acceptance of 6% interest.

8.3. In the said affidavit, the petitioner has stated as follows:-

“The TANGEDCO has made an offer for settlement by agreeing to pay 6% interest on the payments made belatedly towards invoices for supply of electricity as a one time measure citing their desire to amicably resolve the dispute and also the financial position they find themselves in. The

petitioner has suffered enormous loss due to the non-payment of the interest fixed under Tariff Orders since it pays substantial sums towards interest to banks and financial institutions due to the delay in payments of the Invoice dues. Upon advice of its lawyer to accept an amicable settlement and after consideration of such offer and the stand of TANGEDCO that it is currently in a financial difficulty, the petitioner is willing to accept 6% interest on the following terms:-

- a. The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.*
- b. Such payment shall be made within 60 days of filing of this affidavit before the Hon'ble TNERC.*
- c. The Hon'ble TNERC may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e., at 1% p.m. shall be paid.*
- d. The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards costs of this DRP.*
- e. In the event the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payment in that regard shall be paid by TANGEDCO.”*

8.4. As the parties have reached a settlement out of court, the respondent shall make payment as agreed to the petitioner within a period of 60 days from the date of this order. Accordingly, the petition is disposed of.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.PrabhakaraRao)
Member
/True Copy /

(Sd.....)
(M.Chandrasekar)
Chairman

Secretary
Tamil Nadu Electricity
Regulatory Commission