

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.Prabhakara Rao Member
Thiru.K.Venkatasamy Member (Legal)

and

D.R.P. No.37 of 2014

Woodside Fashions Limited
22, Camac Street
Kolkata – 700 016.

... Petitioner
(Thiru. Rahul Balaji
Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Company Limited
(TANGEDCO)
Rep. by its Chairman & 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;
05-09-2019; 17-09-2019; 10-12-2019
and 25-02-2020**

Date of order : 15-09-2020

The D.R.P.No.37 of 2014 came up for final hearing before the Commission on 25-02-2020 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. 37 of 2014:-

The prayer of the petitioner in this D.R.P.No.37of 2014 is to direct the Respondents to make payment of a sum of Rs.21,95,789/- being the interest due and payable to the petitioner against delayed payments made till 05-08-2013 for power supplied from its Wind Power Generation Projects forthwith to the petitioner and to direct the respondents to bear the costs of the instant petition including court fees.

2. Facts of the Case:-

This petition has been filed to direct the Respondents to forthwith to make payment of a sum of Rs.21,95,789/- being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied till 08-04-2013 from wind generation units of the petitioner.

3. Contentions of the Petitioner:-

3.1. This petition is being filed seeking to claim interest on delayed payment against invoices raised by the petitioner for which payment has already been made by TANGEDCO. In addition to the payments which have been made belatedly, there are substantial sums of money due under invoices raised which are as yet

outstanding. The payment of the invoice amounts together with the interest thereon is also due and payable.

3.2. The petitioner is currently preferring the claim only in respect of interest portion of invoices already made as the cause of action for making a claim on interest for payments against unpaid invoices would arise only when payments in that regard are received and when such payments are made without interest which the Respondents are in contract and under law bound to pay.

3.3. The petitioner is an independent power producer from its Wind Energy Generator which is, *inter alia*, involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner company is having wind power generating projects to the tune of 1.5 MW in the State of Tamil Nadu.

3.4. The petitioner has established Wind Power Generation Project in the village of Eragampatti, Dharapuram Taluk, Tirupur districts in the State of Tamil Nadu with a combined capacity of 1.5 MW and the power generated by its unit is being sold to the 1st Respondent under the terms of Wind Energy Purchase Agreement dated 4th October, 2010 executed by the petitioner with the TANGEDCO.

3.5. The Wind Energy Generators (WEGs) belonging to the petitioner commissioned after the coming into effect of Tariff Order No.1 of 2009 issued by the Commission are governed by the said order.

3.6. Para 8.11.1 of the said Tariff Order deals with billing and payment and is extracted hereunder:-

“8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”

3.7. The petitioner submits that older category of energy purchase agreements have a billing and payment clause which reads as follows:-

“Billing and Payment

a. The wind energy generator agrees to raise bill on the distribution licensee for the energy generated and fed into the grid after deducting the energy imported from the grid.

b. The payments to wind energy generator in respect of the energy supplied shall be made by the Board within the same period as provided by the Board to recover payments from its HT industrial consumers”.

3.8. The time period stipulated for recovery of dues from HT consumers by TANGEDCO is 7 days and therefore as per the terms of the Energy Purchase Agreement, TANGEDCO is liable to make payment against invoices within a period of 7 days from the date of invoice.

3.9. The WEGs belonging to the petitioner operate under Energy Purchase Agreements wherein TANGEDCO is liable to make payment against invoices raised by the petitioner within a period of 30 days from the date of invoice failing which the invoice amount would be payable along with interest towards delayed payment at the rate of 1% per month. The relevant clause is hereunder:-

“Billing and Payment:

- a. *The wind energy generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.*
- b. *The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”*

3.10. Despite the above mentioned clauses, payment against invoices raised by the petitioner and other Wind Power Producers in the State of Tamil Nadu for power sold to TANGEDCO was being delayed inordinately by TANGEDCO. Further, even when the payments were being made, no interest on delayed payment was paid. The said issue was finally decided by the Hon'ble APTEL by its order dated 17-04-2012 passed in the matter of Chairman, TNEB &Anr.V. Indian Wind Power Association and Ors.in Appeal No.11 of 2012. The relevant paragraphs are extracted hereunder:-

“13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.

17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied the loans can be serviced along with the promised return of investment.

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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.”

3.11. In the light of the specific provision contained in Tariff Order No. 1 of 2009 on interest on 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.

3.12. 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 8th April, 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 EPA.

3.13. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.21,95,789/- towards interest on delayed payments alone.

3.14. 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. The petitioner also submits that 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 proceed with its expansion plans.

3.15. The petitioner had sent a detailed letter dated 05-08-2013 to the 1st Respondent bringing to its notice the details of various outstanding payments due and payable by TANGEDCO to the petitioner. The petitioner had also highlighted the difficulties faced by it due to the delay in making payments and had called on the 1st Respondent to expedite settling of dues. 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.

3.16. The petitioner is therefore constrained to file the instant petition seeking payment of interest on delayed payments already received. The petitioner submits that it is paying a substantial court fee of Rs.21,958/- to file the instant petition for recovery of interest on 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 28-04-2014:-

During the hearing held on 28-04-2014, both parties submitted that they proposed to negotiate the issue for finding the possible settlement and considering the submission of both parties, the Commission has granted 60 days time for settlement and report to the Commission.

5. Hearing held on 05-09-2019:-

In the hearing held on 05-09-2019, the Counsel for the Respondent informed that notice seeking the willingness on the part of the petitioner for settlement at 6% interest has already been issued and TANGEDCO was directed to file counter.

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

In the hearing held on 17-09-2019, the petitioner's counsel has been directed to file Memo for accepting 6% interest on payment from TANGEDCO.

7. Hearing held on 10-12-2019:-

In the hearing held on 10-12-2019, Memo has been filed by the petitioner agreeing the offer of the TANGEDCO Counsel for settlement of dues at 6% per annum, if the payment is made within a period of 60 days.

8. On 17-12-2019, the petitioner has filed an affidavit accepting the offer of TANGEDCO to pay 6% interest on the belated payment. In the affidavit, the petitioner has 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.

9. Hearing held on 25-02-2020:-

In the hearing held on 25-02-2020, the counsel for the petitioner submitted that only part payment has been made and the Commission directed to file both parties to file Written Submissions within two weeks. However, no Written Submission has been filed by any party.

10. Findings of the Commission:-

10.1. The petition has been filed to direct the Respondents to pass an order directing the respondents to make payment of a sum of Rs.21,95,789/- being the interest due and payable to the petitioner against delayed payments made till 05-08-2013 for power supplied from its Wind Generation Projects forthwith to the petitioner and to direct the respondents to bear the costs of the instant petition including court fees.

10.2. The hearing in the matter took place on various dates. During the hearing held on 17-09-2019, the Counsel for the Petitioner was directed to file a Memo for accepting 6% interest on payment from TANGEDCO. On 10-12-2019, the Counsel for the Petitioner agreed to the offer of TANGEDCO.

10.3. On 17-12-2019, the petitioner also filed an affidavit agreeing to accept the offer of TANGEDCO for payment of interest at 6% per annum. In the affidavit, the petitioner has 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..
- (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.

10.4. On 25-02-2020, the counsel for the petitioner has submitted that only part payments have been made. The Commission therefore directed both the parties to file their Written Submission within 2 weeks. However, neither of the parties has filed any Written Submission. Hence, the Commission is inclined to decide the issues based on available records.

10.5. The respondent TANGEDCO has not denied its liability for payment of interest. Having failed to avail the payment of reduced rate of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or orders of the Commission in force as the case may be. In this connection, our attention is drawn to the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the Commission which provides as follows:-

“8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.”

10.6. The Hon'ble APTEL in its order dated 17-04-2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been upheld by the Hon'ble Supreme Court in CFC Vs. GangadharNarasinghadasAgarwal in Revised Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

10.7. In view of the above, the respondent, TANGEDCO is liable to pay 1% interest for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order.

10.8. TANGEDCO is directed to make payment of Rs.21,95,789/- towards interest as per our findings in para10.7 above to the petitioner within three months from the receipt of this order, after deducting payments, if any already made. In the circumstance, there will be no order as to costs.

This D.R.P. is finally disposed of with the above direction.

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

(Sd.....)
(Dr.T.PrabhakaraRao)
Member

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission