

**BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY  
COMMISSION SHIMLA**

In the matter of:-

M/s Brua Hydrowatt Pvt. Ltd. thro' its  
Senior Vice President Sh. Suresh Kumar Tiwari  
having its registered office at Plot No.2,  
Industrial Area, Baddi-173205  
Distt. Solan (HP)

**.....Petitioner**

Versus

1. The HP State Electricity Board Ltd. thro' its,  
Chief Engineer (Commercial)  
Vidyut Bhawan, Shimla-171004

2. The Govt. of Himachal Pradesh thro' its  
Principal Secretary (MPP& Power),  
Shimla-171002

**.....Respondents**

Petition No. 8 of 2020

(Decided on **22<sup>nd</sup> March, 2021**)

**CORAM**

**DEVENDRA KUMAR SHARMA  
CHAIRMAN**

**BHANU PRATAP SINGH  
MEMBER**

Counsels: -

for Petitioner: Sh. Vikas Chauhan, Advocate

for Respondent: Sh. Surinder Saklani, Standing Counsel  
a/w Sh. Kamlesh Saklani  
(Authorised Representative)

**ORDER**

(Last heard through video conferencing held on 3<sup>rd</sup> March, 2021 and Orders reserved)

M/s Brua Hydrowatt Pvt. Ltd. a Company incorporated under the Companies Act, 1956, having its registered office at Plot No.2, Industrial Area, Baddi, Distt. Solan (HP)-173205 (hereinafter referred as “the Petitioner Company”) which is maintaining and operating the Brua Small Hydro Project (9MW capacity) located on Brua Khad, a tributary of the Baspa river in Kinnaur Distt. (HP) (hereinafter referred as “the Project”) has moved through its Senior Vice President Sh. Suresh Kumar Tiwari the above captioned petition under Section 86 (1) (f), read with Section 158, of the Electricity Act, 2003(hereinafter referred as “the Act”), for adjudication by way of arbitration of its

dispute, in relation to the operation of the aforesaid Project, arisen with the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Respondent Board”).

2. A very brief resume of the relevant facts taken out of the pleadings of the parties, would be appropriate and would assist the determination of the present petition. Per submissions made by the petitioner the facts involved are as under:-

- (a) On 14.11.2000 M/s Continental Components (P) Ltd. were awarded the work of the preparation of the DPR and implementation of the 3 MW Brua SHP in Kinnaur Distt. (H.P.) and MOU was signed on 09.12.2000 between the GoHP and the petitioner, whereby the State Govt. was to stop activities being done on Investigations and other works of the Project and the Company was made responsible for carrying out further works/ investigations of the Project.
- (b) Subsequently, the petitioner submitted the DPR for an enhanced capacity of 5MW and the Techno-Economic Clearance (TEC) was accorded to Brua SHP (2x2500kW) on 15.03.20005.
- (c) The petitioner entered into the Implementation Agreement (IA) with the GoHP for Brua SHP (5MW) on 25.07.2006 and also executed a Power Purchase Agreement (PPA) with the HPSEB, the predecessor-in-interest of the Respondent Board, on 06.04.2009, whereunder the petitioner agreed to sell, and the HPSEB agreed to purchase, the entire energy (excluding the Govt. Supply) received from the Project at the Interconnection Point to be installed by the HPSEB at 22kV proposed Control Point (unmanned) at Karcham, Distt. Kinnaur (HP), at the cost of the petitioner.
- (d) The GoHP thereafter approved capacity enhancement of the Project from 5MW to 9MW and an IA for enhanced capacity of 9MW was executed on 23.09.2011 and the Supplementary PPA was executed on 09.07.2018.
- (e) Per the PPA dated 06.04.2009, the evacuation of power from the Brua SHP was to be from the Sub-station at Karcham. But in the meeting held on 05.05.2010, convened by the HPPTCL, the power from the project was decided to be evacuated in the joint mode with the Shaung SHP (3MW) at 66kV Sub-station at Urni (Karcham) at 66kV level. It was clarified on 09.02.2011 that power shall be jointly evacuated from Brua and Shaung SHP in the joint mode at 66kV level upto 66/22kV pooling station at Kilba.

- (f) In the month of March, 2015 the Brua SHP was ready for its Commercial Operation, but the proposed Urni Sub-station for the power evacuation and further pooling station at Wangtoo were not ready. Hence, as an interim arrangement, the Respondent Board allowed the evacuation of power of the Brua SHP alongwith two other projects at 66/22 kV Sub-station Nathpa of the Respondent Board with the condition that the work of 66kV bay at Nathpa shall be executed by the IPPs jointly on self-execution basis alongwith other conditions. No additional bay was available at Nathpa, the petitioner agreed to construct 66kV bay at Nathpa jointly with 2 other IPPs Rala (10MW) and Shaung (3MW) and the bay was to be constructed by December, 2015.
- (g) The work of 66kV Sub-station at Urni and 400/220/66 kV Wangtoo Sub-station was not complete and to facilitate evacuation of power, interim arrangement was envisaged by charging one of 220kV Kashang-Bhabha Line circuit at 66kV and allowing solid tapping at 66kV. The line was charged in April, 2016 and the project was synchronized in April, 2016.
- (h) The Respondent Board by raising a demand dated 15.10.2018 levied a sum of Rs. 16,20,000/- upon the petitioner in the form of Liquidated Damages for the delay in not synchronizing the Units on or before the Scheduled Date of Synchronization @ Rs.1,000/- per MW for each day of delay beyond the Scheduled Date of Synchronization, subject to maximum of 180 days.
- (i) Another demand of Rs.61.95 lakh (including interest) as due on 23.09.2011, on account of Survey and Investigation Charges as per Clause 5.40 of the Implementation Agreement (IA) dated 23.09.2011, was raised before signing of the PPA for the Project of 9MW capacity. As the Respondent Board had threatened not to execute PPA for the enhanced capacity of 9MW of Brua SHP, the petitioner deposited the principal amount of Rs.19.27 lakh in March, 2014. After deduction of the principal amount the outstanding amount payable was worked out to be Rs.67.62 lakh till December, 2014.
- (j) Per Clause 5.40, of the IA, all such expenditure was to be intimated within first three months of the effective date but the GoHP, being the First Party to the IA, never intimated such expenditure incurred by its agencies.

- (k) A dispute had arisen regarding the levy of the Liquidated damages under Clause 16.2 of the PPA and the Survey and Investigation Charges under Clause 5.40 of the IA, on the Project. The petitioner invoked Clause 13 of the PPA for good faith negotiations by addressing a letter dated 16.11.2018 to the Respondent Board and for good faith negotiations, a meeting was held on 13.03.2019. Both the parties tried to resolve the dispute but no fruitful conclusion could be reached. The Respondent Board informed that it had also carried out the Survey and Investigation and agreed to review the interest part. The project was delayed beyond the Scheduled Date of Synchronization by more than 180 days and hence, the LD Charges were also justified. The meeting ended with the conclusion that regarding the dispute for levy of LD Charges, the IPP should approach this Commission and in case the matter regarding Survey and Investigation Charges could not be settled with the Respondent Board, the same should be represented before this Commission.

3. With the background delineated in the preceding para the petitioner has moved this petition praying the Commission-

- (1) to refer the aforementioned existing disputes/issues between the petitioner and the Respondent Board for adjudication by way of arbitration as per the terms and conditions of the PPA executed between the parties and under the provisions of section 86(1)(f) of the Electricity Act, 2003;
- (2) in the alternative to direct the Respondent Board to reimburse the sum of Rs. 19.22 lakh, alongwith interest @12% to the petitioner, as deposited towards the illegal demand of the Respondent Board for Survey and Investigation Charges being beyond the terms and conditions of the IA dated 23.09.2011;
- (3) to set aside the Notice dated 15.10.2018, issued by the Respondent Board, regarding levy of Liquidated Damages and recovery of the Survey and Investigation Charges against the petitioner; and
- (4) to pass such other Order, as the Commission may deem fit and proper in the facts and circumstances of the case.

4. It may be noted that Section 86(1)(f) of the Electricity Act, 2003, is a special provision for adjudication of disputes between the licensees and the generating

companies. As interpreted by the Hon'ble Apex Court in the case **Gujrat Urja Vikas Nigam Ltd. Vs. ESSR Power Ltd. (2008) 4SCC 755** such disputes can be adjudicated upon either by the State Commission itself or be referred for arbitration by any person(s) nominated by it. Thus, the main issue for our consideration is whether the State Commission is fully competent to decide itself, or to refer for arbitration, the aforesaid dispute, as set out in the petition, by exercising its power under section 86(1)(f) of the Electricity Act, 2003. The law is well settled that for the purpose of deciding the question of jurisdiction the pleadings of the petition are to be scrutinized cautiously and carefully and then to decide, whether or not the concerned Commission has jurisdiction to decide the said controversy.

5. We can gather from the pleadings of the petition the fact that the first part of the dispute relating to the levy of liquidated damages has arisen under Article 16.2 of the PPA dated 6<sup>th</sup> April, 2009, executed by the petitioner with the predecessor-in-interest of the Respondent Board, i.e. HPSEBL Article 13.2 (a) thereof reads as under:-

*“13.2(a) Except as otherwise provided in the Agreement, all Disputes arising out of or relating to the Agreement, as are not resolved during the period as per Section 13.1, shall be adjudicated, upon or referred to arbitration by the Commission as per Section 86(1)(f) of the Electricity Act, 2003.”*

6. The second part of the dispute which relates to the levy of Survey and Investigation Charges has arisen under Article 5.40 of the Implementation Agreement dated 23<sup>rd</sup> September, 2011, executed between the petitioner and the Govt. of HP. Article 11 of thereof reads as under:-

**“11. Resolution of Disputes**

*11.1 The parties shall attempt to resolve any dispute in relation to arising out of or in connection with the Agreement (hereinafter referred as the Dispute) by mutual discussions.*

*11.2 Any difference and/or dispute arising at any time between the parties out of the MOU/PIA/IA or interpretation thereof shall be submitted to be resolved by the parties hereto by mutual negotiations, failing which the matter shall be referred to the Arbitrator to be appointed as per the provisions of the Arbitration and Conciliation Act, 1996. However, all disputes shall be settled within the jurisdiction of Courts of Himachal Pradesh.*

*11.3 During the pendency of the Court proceedings, both Parties shall continue to perform their respective obligations under this agreement, unless the performance of such obligation itself is subject of such proceedings.*

*11.4 No party shall be considered to be in default under this IA for any breach of any of the terms thereof due to the imposition of restrictions and*

*onerous regulations by any Government or statutory authority or agency or other cause beyond its reasonable control.*

*11.5 All legal proceedings arising in connection with this agreement shall be subject to the jurisdiction of the Himachal Pradesh High Court and its subordinate courts in the State of Himachal Pradesh irrespective of the place of performance/execution of the Agreement.”*

7. While admitting the above captioned petition, we observed that the petitioner has prayed for adjudication/reference to an Arbitrator following two disputes, as under:-

- (1) Levy of Liquidated damages under Article 16.2 of the PPA dated 6<sup>th</sup> April, 2009.
- (2) Levy of Survey and Investigation Charges under Article 5.40 of the Implementations Agreement dated 23<sup>rd</sup> September, 2011.

8. Since the Commission *prima facie* has no jurisdiction to adjudicate the dispute relating to levy of Survey and Investigation Charges, the petitioner was advised to modify its petition to that extent, Sh. Vikas Chauhan, the learned Advocate, appearing for the petitioner, has stated that after the advice from the Company, it has been decided not to modify/amend the petition, and prays for adjudication/reference to an Arbitrator.

9. The Commission observed that the dispute No.2, arising out of the IA/SIA , relates to the State Govt. and without hearing of the State Govt. , the Commission cannot decide both the disputes simultaneously and as such the response on the dispute arisen out of IA /SIA from the State Govt. becomes necessary. Hence the Commission vide its interim order dated 30.07.2020 directed the petitioner to implead the State Govt. as a necessary party in the petition and also to supply a copy of the petition, alongwith its reply received from the Respondent Board, to the State Govt.

10. Pursuant to the direction given in the preceding para, the petitioner has impleaded the State Govt. as Respondent in this petition.

11. In response to the petition, the Respondent Board submits that-

- (a) the petition is not maintainable in the present form and the relief as prayed by the petitioner is not legally tenable in eyes of law;
- (b) the petition deserves dismissal for the reason that the Regulatory Commission under Section 86(1)(f), of the Electricity Act, 2003, has the power to adjudicate the part of the dispute arising from the PPAs and the issue of Survey and Investigation Charges is beyond the jurisdiction of

this Commission as this pertains to the Implementation Agreement (IA) executed between the petitioner and the GoHP;

- (c) the issue of jurisdiction goes into the roots of the cause and before opening the merits of the case the same ought to be decided in the first instance;
- (d) the petitioner has failed to achieve the Commercial Operation of its project as per the construction schedule and the liquidated damages as levied by the Respondent Board are strictly as per the Article 16 of the PPA and petitioner is bound to pay the same accordingly in terms of the contractual undertakings. The Liquidated Damages levied by the Respondent Board are just and legal in the eyes of law. The petitioner is liable to pay the Respondent Board the Liquidated Damages for delay @ Rs.1000/-per MW for each day of delay in synchronization of the project beyond the Scheduled date of synchronization;
- (e) the allegation of delay in commissioning of 66kV Urni Sub-station cannot be sustained. As the permanent interconnection point of Brua 9 MW SHP of the petitioner, as provided in the PPA, dated 06.04.2009 read with the SPPA dated 09.07.2018, is 66kV Urni Sub-station of the Himachal Pradesh Power Transmission Corporation Ltd. (HPPTCL), the petitioner has made arrangement with the HPPTCL with a separate agreement for evacuation of power through the permanent interconnection point. However, the Respondent Board has provided interim evacuation of Brua HEP Power through the system as provided in the SPPA dated 09.07.2018 and 66/22 kV Substation of the HPSEBL at Nathpa/Bhogtu 66/220 kV Substation of HPPTCL was considered as interconnection point during the period of Interim Agreement of power evacuation;
- (f) the demand raised for the Survey Investigation is just and legal in the eyes of the law and it is wrong to allege that the Respondent Board has raised an illegal demand from the petitioner qua the Survey and Investigation Charges. Per Clause 5.40 of the IA dated 23.09.2011 signed between the petitioner and the GoHP, the petitioner is bound to reimburse to the Respondent Board/appropriate State Power Utility the amount spent by that entity, on investigation and infrastructural work of the Project upto the Effective Date alongwith the compound interest @10% per annum on

year to year basis from the date of incurring of such expenditure upto the date of actual reimbursement.

12. In response, to the petition, Sh. Shanti Swaroop Bhatti, appearing on behalf of the State Govt., adopts the reply filed on behalf of Respondent No.1 i.e. HPSEBL.

13. The petitioner, in the rejoinder to the reply filed by the Respondent No.1, i.e. HPSEBL and adopted by the Respondent No.2, i.e. the State Govt. submits:-

- (a) that the Respondent No.1 vide preliminary submissions has just made vague assertions qua the maintainability of the petition without any supporting justification or law applicable thereto. The petitioner urges that the Respondent Board be put to strict proof of the assertions made ;
- (b) that section 86(1)(f) of the Act empowers the Commission to adjudicate upon the disputes between licensees and generating Companies and to refer any dispute for arbitration. The petitioner vide its petition has put forth a dispute, whereby the Respondent Board has made an illegal demand with regard to the Survey and Investigation Charges, though under the garb of IA dated 23.09.2011. The said dispute is squarely covered under the provisions of section 86(1)(f) of the Act as the Respondent No.1 is the licensee and the petitioner is a generating Company in terms of the Electricity Act. The Legislative intent behind section 86(1)(f) is very plain and simple empowering this Commission to adjudicate any kind of dispute between a licensee and a generating Company, as there is no embargo to restrict the Commission to adjudicate the disputes arising out of the PPA only and not otherwise;
- (c) that the issue with regard to the jurisdiction of the State Commission has been settled by Hon'ble Supreme Court vide its judgment rendered in **Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd. (2008) 4 SCC 755** holdings that since the Electricity Act, 2003 has come into force w.e.f. 10.06.2003, after this date all adjudication of disputes between the licensees and Generating Companies can only be done by the State Commission or the arbitrator(s) appointed by the Commission. All disputes and not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in sections 86(1), between the licensee and generating Companies can only be resolved by the Commission or the

arbitrator appointed by it. This is because there is no restriction in section 86(1)(f) about the nature of the dispute;

- (d) that it is wrong and denied that the petitioner has failed to achieve the commercial operation of its project as per the construction schedule and the liquidated damages as levied by the Respondent Board are strictly as per Article 16 of the PPA and the petitioner is bound to pay the same accordingly in terms of the contractual undertakings. The levy of the Liquidated Damages on the petitioner by the Respondent Board are uncalled for as the Respondent Board has itself failed to fulfill its undertakings as per Article 9.2 (c) of the PPA dated 06.04.2009, whereby the HPSEBL had to make necessary arrangements to set up the Interconnection facilities within the stipulated time schedule. The Respondent No.1 has failed to provide the permanent Interconnection Point to the petitioner as the proposed Sub-station is still under construction though in its final stages. Per PPA dated 06.04.2009 the Interconnection Point was to be set up at 22kV proposed Control Point (unmanned) Karcham, Distt. Kinnaur (HP) for which the petitioner had already prepared the land case for the transmission line upto Karcham Sub-station and the same was got approved from the HPSEBL as well. After the confirmation of the Interconnection point by the HPSBL on 09.02.2011, the petitioner had to revise its entire transmission line alongwith the land case, which was finally got approved on 02.12.2013 from the Ministry of Environment and Forest, Govt of India. Even thereafter only the interim power evacuation arrangement was made available on 10.04.2016, after due deliberation with the HPSEBL and the STU (HPPTCL), on several requests of the petitioner. Therefore, the levy of liquidated damages on the petitioner by the Respondent Board, are uncalled for.

In terms of the above, this Commission has every jurisdiction under the provisions of section 86(1)(f) of the Electricity Act, 2003 to adjudicate the disputes put forth in the petition itself or to refer it for arbitration to person(s) to be nominated by it.

14. In rebutted, the Respondent No.1 i.e. HPSEBL has filed sur-rejoinder, on behalf of the Respondents, to the rejoinder filed by the petitioner reiterating and affirming the averments made in the corresponding paras of the reply to the petition and further submitting that-

- (a) since the issue of Survey and Investigation Charges squarely falls under the domain of the Implementation Agreement and the Government of Himachal Pradesh being the party to the IA, the said issue be raised by the petitioner thereunder or exhaust the appropriate remedy available to it under the law;
- (b) the law relied upon by the petitioner is not applicable to the present case, the reason being that each case is to be decided in view of the facts of the case. The present is the case where issue of Survey and Investigation Charges is one of the issue, which falls under Clause 5.40 of the Implementation Agreement. Hence the issue of the jurisdiction of this Commission qua the issue pertaining to the Implementation Agreement is to be firstly decided as it goes to the roots of the case;
- (c) the erstwhile HPSEB had conducted the Survey and Investigation of the site in issue since 1995-96 to 1998-99 and 2006-07, as per the sheet appended as Annexure-P-23 and as per Clause 5.40 of the Implementation Agreement dated 23.09.2011 petitioner is bound to pay the said charges;
- (d) per Article 16 of the PPA, the petitioner is bound to pay the Liquidated Damages (LD) and the Respondent Board has in very just manner imposed the LD Charges. The permanent interconnection point to the petitioner as per Article 2.2.44 of the IA is 66kV Sub-station of the HPPTCL at Urni in Kinnaur Distt. And as per the connection Agreement signed by the petitioner with the HPPTCL and it is baseless allegations of the petitioner that the Respondent Board has failed to provide the permanent interconnection point.

In view of the facts and submissions made hereinbefore the petition preferred by the petitioner, is devoid of merits and deserves to be dismissed in the interest of justice and fair play.

15. During the hearing of this case, at the request of Sh. Vikas Chauhan, the Learned Advocate for the petitioner, has been permitted to place on record the revised TEC dated

20.03.2012, as accorded by the Directorate of Energy (DoE i.e. the Respondent No.2) in supersession to the earlier TEC dated 15.03.2005, referred to hereinbefore in sub-para (b) of para 2 of this Order, with the directions to the petitioner to supply a copy of the revised TEC to the respondents to enable them to file their response. The respondents have not filed their response. However, Respondent Board, subsequently submits that the perusal of the aforesaid revised TEC itself reveals that the petitioner was under obligation to incorporate terms and conditions of the revised TEC in the PPA, but to the sheer surprise, the SPPA stands executed between the petitioner and the Respondent Board/HPSEBL on 09.07.2018, without incorporating the terms and conditions of the revised TEC. The parties to the contract are bound to their Commercial commitments and the terms and conditions of the PPA and the subsequent SPPA are *ispsofacto* binding. The Petitioner, therefore, can not take advantage from the revised TEC and cannot escape from paying the Liquidated Damages in terms of the agreements executed by it.

16. The claims of the petitioner Company were rejected and good faith negotiations meeting held on 11.03.2019 in terms of Clause 13.1 of the PPA also did not resolve the disputes. Per Clause 13.2 of the PPA, the petitioner Company has moved this petition under section 86(1)(f), read with section 158 of the Act, for adjudication, by way of reference to an Arbitrator(s) the claims raised by the petitioner Company.

17. Before resorting to the provisions section 86(1)(f), read with section 158, of the Electricity Act, 2003 and Regulations 9,12 and 53 of the HPERC (Conduct of Business) Regulations, 2005, the Commission is to satisfy itself whether the actual dispute has arisen between the parties; the adjudication of the dispute falls within the jurisdiction of this Commission; the sufficient material is available on record to ascertain nature of the issue/claim raised by the parties; and the availability of technical expertise to analyse and decide the issue/claim raised before it.

18. Admittedly, the adjudications of part of the disputes, pertaining to the claim for Liquidated Damages for delay in synchronization of the Project beyond the Scheduled date of synchronization, attracts the provisions of Clause 13 (Resolution of Disputes) of the PPA and thus falls within the jurisdiction of this Commission. So far as part of the dispute qua the claim for Survey and Investigation Charges, it is to be noted that at the time of allotment, TEC of the Project was of 3 MW capacity, which was subsequently enhanced to 5 MW and further to 9 MW. The value, quality and contribution of the

Survey and Investigation provided by the erstwhile HPSEB, the predecessor-in-interest of the HPSEBL, for the preparation of the project, needs to be looked into.

19. For the purpose of clause 13 ( Resolution of Disputes) the expression “dispute” requires to be interpreted as per clause 2.2.26 of the PPA to mean any material dispute or material difference of any kind, whatsoever, between the parties to the agreement (PPA) in connection with or arising out of the agreement (PPA). By virtue of the provisions of clause 2.1.7 of the PPA, the Implementation Agreement dated 25.07.2006, alongwith its subsequent amendments, being Annexure-III to the PPA, becomes the integral part of the PPA. Hence the provisions of both PPA and Implementation Agreement are to be considered together and not in contradiction.

20. In terms of the Hon’ble Supreme Court judgment in **Gujarat Urja Vikas Nigam V/s ESSR Power Ltd. reported in (2008) 2008 ELR (SC) 0001 and 4 SCC 755** it has *inter alia* been held that-

“ 56. Hence, on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996, we are of the opinion that whenever there is a dispute between a licensee and the generating company(ies), only the State Commission or the Central Commission (as the case may be) or Arbitrator (or Arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003), would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996.

57. However, since the Electricity Act, 2003 has come into force w.e.f. 10.06.2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the Arbitrator (or Arbitrators) appointed by it. After 10.06.2003, there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the Arbitrator (or Arbitrators) nominated by it. We further clarify that all disputes and not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in Section 86 (1), between the licensees and the generating companies, can only be resolved by the Commission or An arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute.”

Therefore, in terms of the verdict of the Hon’ble Apex Court, and the foregoing discussion this Commission has every jurisdiction under the provisions of the Act either to adjudicate upon the dispute itself or, to refer it for arbitration to the person(s) to be nominated by it.

21. During the course of the proceedings before this Commission it has been established that there exist disputes in relation to the demands, raised by the Respondent Board, concerning the levy of the Liquidated Damages and the levy of the Survey and Investigation Charges for the operation of the Brua Small Hydro Project, set up by the petitioner Company in the Baspa river basin in Kinnaur Distt. (HP). These disputes, being disputes between the licensee (i.e. HPSEBL) and the generating Company i.e. (petitioner Company) can be resolved by the Arbitrator(s) nominated by this Commission under section 86(1)(f) of the Electricity Act, 2003, as prayed by the petitioner Company.

22. This Commission, after taking into consideration the facts and the circumstances of the case, the arguments advanced and the judgments cited, is satisfied that the *prima facie* disputes have arisen in terms of the agreements executed by the parties, the disputes fall within the jurisdiction of this Commission and apart from this the Commission is having skeleton staff, adequate technical staff is not available within the Commission to minutely analyse the issues/claims raised before it. Moreover, no plausible reason or cause has been shown against the arbitration request, and the Commission is convinced that the reference to the Arbitrator(s) will be justified to meet the ends of justice.

23. To eliminate further, unnecessary delay and the possible apprehension of any bias, the Commission directs that the dispute be referred for adjudication and settlement through arbitration by person(s), having adequate knowledge and experience in dealing with the matters relating to electricity generation, transmission and distribution, to be nominated by the Commission and the parties are asked to propose name(s) of the person(s) to be nominated as the Arbitrator(s) under regulation 54 of the HPERC (Conduct of Business) Regulations, 2005.

24. In case the parties are unable to agree on the name of the sole Arbitrator, to be designated by the Commission, they may propose their representative to man the panel of Arbitrators. The Commission after ascertaining the consent of the person(s) to be appointed/designated as the Arbitrator(s), will issue the formal order, containing the terms of reference and the conditions of their appointment as Arbitrator(s).

25. The Arbitrator(s) to be nominated by the Commission will start the arbitration process after their nomination and may follow such procedure, as they may consider appropriate, consistent with the principles of natural justice and fair opportunity to be given to the parties to the arbitration. The Arbitrator(s) will pass an award giving reasons

for the decision on all the issues arising from adjudication and furnish the award with relevant documents to the Commission within the timelines specified in the Arbitration and Conciliation Act, 1996. The award made by the Arbitrator(s) shall be the award under the Arbitration and Conciliation Act, 1996 (26 of 1996).

26. The Commission further orders the parties to make their submissions before the Arbitrator(s) to be nominated by the Commission. Therefore, the Respondent shall ensure that all the facilities and co-operation, as may be stipulated in the terms of reference, are made available to the said Arbitrator(s). The Respondent shall also produce or cause to be produced, all documents/records required during the course of arbitration proceedings.

27. It is made clear that this Commission has not expressed any opinion on the merits of the Petitioner's claim. Nothing said by us in this Order should be treated as an expression of our opinion on the merits of the petitioner's case. The Arbitrator(s) may pass the order or make an award independently and in accordance with law.

**Sd/-**  
**(Bhanu Pratap Singh)**  
**Member**

**Sd/-**  
**(Devendra Kumar Sharma)**  
**Chairman**