

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

Petition No: 42 of 2022
Instituted on: 07.07.2022
Heard on: 17.11.2022
Decided on: 07.01.2023

M/s Leond Hydro Power Private Limited having its Registered office at,
Village Naura, P.O. Kareri,
Tehsil Shahpur, Distt. Kangra, through
Sh. Arun Sharma, Director.

.....Petitioner

Versus

The HP State Electricity Board Ltd. through
Chief Engineer (Commercial),
Vidyut Bhawan, Shimla-171004.

.....Respondent

CORAM

DEVENDRA KUMAR SHARMA
CHAIRMAN

YASHWANT SINGH CHO GAL
MEMBER (Law)

SHASHI KANT JOSHI
MEMBER

Petition under Section 86 (1) (f) of the Electricity Act 2003 for adjudication of disputes relating to the Levy of Liquidated Damages Charges, Non-Payment of Energy Bills, Compensation for the loss of energy generation and interest on the Non-Payment of Energy Bills and compensation for loss of energy.

Present:-

The Petitioner: Sh. Arun Sharma, Director.
For the Respondent: Ms. Vandana Thakur, Adv. Vice, Sh. Surinder
Saklani, Adv. with Sh. Kamlesh Saklani,
Authorised Representative.

ORDER

This Petition has been filed under Section 86 (1) (f) of the Electricity Act 2003 (Act for short) by the Petitioner Company (hereinafter to be referred as the Petitioner). The Petitioner has built up a Small Hydro Electric Project known as

Leond Hydro Power Project (2.00 MW) situated at Village Naura, PO Kareri, Tehsil Shahpur, Distt. Kangra (HP) (Project for short) on Build, Own, Operate and Transfer basis. The Petitioner and the Government of Himachal Pradesh (GoHP for short) had signed the Implementation Agreement (IA for short) on 15.02.2012 followed by a Supplementary Implementation Agreement (SIA for short) on 21.04.2017 (Exhibit P-2) and as per SIA, the date of start of construction of the Project was approved and fixed as 13.03.2016 and a period of 24 months was allowed for the construction of the Project meaning thereby that the Scheduled Commercial Operation Date (SCOD for short) or the Date of competition of the Project was 13.03.2018 as also evident from letter dated 03.04.2018 of HIMURJA (Exhibit P-11). The Petitioner after obtaining the clearances, commenced the construction work of the Project on 13.03.2016 and also applied for connectivity to the Grid on 28.01.2016 which was granted on 07.02.2017 by the Respondent and a Connection Agreement for evacuation of Power was signed on 04.08.2017 (Exhibit P-23). As per Clause 4.1 of SIA dated 21.04.2017, the Petitioner was required to finalize the Power Purchase Agreement (PPA for short) immediately and, therefore, the PPA was signed on 29.09.2017 in accordance with Order dated 24.08.2017 passed in Petition No. 41/2017 by the Commission.

2. As per the Petitioner, the Project was synchronized with the Grid on 16.12.2017 (Exhibit P-18), earlier than the SCOD but the Respondent has levied liquidated damages on the Petitioner and wrongly deducted the amount from the

energy bills of the Petitioner who had submitted the bills for the energy generated at the Project w.e.f. 16.12.2017 to 22.03.2018 in accordance with Clause 8.1 of the PPA which have not been paid so far.

3. Further, the interim connectivity had been granted for the Project initially for 2 years (Exhibit P-23) but the Respondent had been issuing instructions to back down the power generation at the Project leading to heavy financial loss to the Petitioner. Further that the dispute had arisen with regard to the PPA for which the Petitioner issued notice dated 10.04.2019 (Exhibit P-3) for resolving the dispute and a notice dated 10.04.2019 (Exhibit P-3) was issued and good faith negotiations were held on 27.06.2019 (Exhibit P-4) but in vain. In the circumstances, the Petitioner filed a Petition before the Commission being Petition No. 75 of 2019 but vide Order dated 21.12.2019 (Exhibit P-5), the Commission directed the Petitioner to first exhaust all the remedies as provided in the PPA. Thereafter, good faith negotiation meetings were held with the Respondent during the period from February, 2020 to March 2022 but most of the claims were rejected. Therefore, the Petitioner is entitled to the following claims:-

Claim No. 1

Reimbursement of Liquidity Charges deducted by the Respondent from the energy bills.

4. As per the Petitioner, the GoHP had fixed the date of start of work at the site as 13.03.2016 (Exhibit P-2) with a construction period of 24 months i.e.

scheduled synchronization date of the Project as 13.03.2018, which was confirmed by HIMURJA vide letter dated 03.04.2018 (Exhibit P-11). As per the Petitioner, the Project was synchronized with the Bithloo Sub-station of the Respondent on 16.12.2017 as evident from letters Exhibit P-17/18. However, the Director (Design), HPSEBL, Sunder Nagar, Distt. Mandi, after conducting tests at the Project, declared the Project synchronized on 23.02.2018 (Exhibit P-7).

5. According to the Petitioner, Liquidated Damages are dealt in Clause 16.2 of Power Purchase Agreement which reads as under:-

“If all the generating units are not synchronized on or before the Scheduled Date of Synchronization specified for different generating units, the Company shall be liable to pay to the HPSEBL Liquidated Damages for the delay @ Rs. 1000/- (one thousand) per MW for each day of delay beyond the Scheduled Date of Synchronization subject to maximum of 180 days after which it would constitute Company Event of Default.”

6. Further averred that Clause 2.2.68 (**infact it is Clause 2.2.69**) of PPA provides as under:-

*“**Scheduled Synchronization Date/Scheduled Date of Synchronization**” means the date by which the Company schedules to Synchronize and connect the unit, for the first time, with the Grid System as per the provisions of the Implementation Agreement”*

7. As per the Petitioner, though the Scheduled Date of Synchronization, as per SIA was 13.03.2018, but the same was achieved on 16.12.2017, about 3 months prior to the SCOD. However, the Respondent issued notice dated

15.10.2018 (Exhibit P-8) for levying Liquidated Damages (LD for short) for delay in synchronization of the units which was replied on 25.10.2018 (Exhibit P-9) that there is no delay in achieving the SCOD. The Respondent vide letter dated 08.04.2019 rejected the contention of the Petitioner and directed its Finance Wing to deduct Liquidated Damages which were consequently deducted from the energy bills of the Petitioner in the succeeding months as evident from letter dated 29.04.2019 (Exhibit P-13). It is averred that the Liquidated Damages have been wrongly deducted despite achieving the synchronization well before the SCOD. As per him, the Respondent instead of providing incentives, has slapped the Petitioner with damages. Hence, the Petitioner is entitled for the reimbursement of Liquidated Damages amounting to Rs. 3,60,000/-.

Claim No. 2

Non-Payment of Energy Bills for energy generated at the Leond Power Station from 16.12.2017 to 22.02.2018.

8. It is the case of the Petitioner that both units of the Project were synchronized with the Grid on 16.12.2017, in the presence of representatives of the P&T wing, Senior Executive Engineer (Electrical) Shahpur and an Independent Engineer approved by the Respondent as evident from letter dated 19.12.2017 (Exhibit P-17).

9. It is further averred that the Design Office of the Respondent at Sunder Nagar was duly informed about the synchronization of the Project but no

representative from the Design Office attended the synchronization conducted on 16.12.2017 and instead, they visited the Project site on 23.02.2018 as evident from letter dated 27.02.2018 (Exhibit P-7) when the synchronization and load throw off tests were re-conducted. As per the Petitioner, the Petitioner had been injecting the power into the system ever since 16.12.2017 and the bills for such energy injected into the Grid of the HPSEBL between 16.12.2017 to 22.02.2018 (Exhibit P-19,20,21) were submitted for release of payment which have been duly verified by the Engineers of the Respondent. As per Clause 8.1 of the PPA (Exhibit P-10), the Petitioner is required to raise monthly bills for the energy injected in the system and the payment for such bills amounting to Rs. 1,40,748.00/- for the month of December 2017, Rs. 2,80,307/- for the month of January, 2018 and Rs.1,98,997/- upto 22nd February, 2018 aggregating to Rs. 6,20,052/- was required to be released in accordance with Clause 6.1 and 8.1 of the PPA but such payments have not been released.

Claim No. 3

Compensation for the loss of energy generation because of instructions issued by the Respondent to back down energy generation at Leond Project.

10. As per the Petitioner, application for the connectivity was submitted on 28.01.2016 and interim connectivity was granted on 07.02.2017 at 33 kV Sub-station, Bithloo (Gaj Sub-station) for two years and connection agreement was signed on 04.08.2017 (Exhibit P-23). However, even after lapse of the aforesaid period of interim connectivity, the Respondent kept on issuing instructions to the

Petitioner to back down energy generation at the Project which has caused heavy financial loss to the Petitioner. Meanwhile, the Respondent allowed interim connectivity for evacuation of power to Gaj-III SHP (5 MW) in the year 2019-20 as evident from letter dated 21.11.2019 (Exhibit P-24) and during the year 2019-20, the instructions to back down the energy were issued to the Project of the Petitioner to accommodate evacuation of power of Gaj-III plant which has caused heavy financial loss to the Petitioner as depicted in Exhibit P-27. It is averred that the interim connectivity to Gaj-III Project was available only for capacity of 33 kV upto 31.03.2020, but even after 31.03.2020, the Gaj-III SHP was allowed to evacuate power by the Respondent at the cost of reduction of energy at the Project of the Petitioner despite that there was no capacity in 33 kV system which has caused substantial financial loss to the Petitioner as evident from the log sheets maintained by the Respondent at Bithloo Sub-station (Exhibit P-28). Further as required under clause 5.6 of the PPA, no committee was formed for Operation of the Project and the instructions to back down energy generation at the Project was issued by the Senior Executive Engineer, Shahpur Division, through his staff at Bithloo Sub-station. This fact was brought to the notice of SE (Operations), Kangra (Exhibit P-25,26) but in vain. It is averred that the Respondent was required to improve the system as per Hydro Policy and as per Regulations framed by the Commission and the Petitioner had raised the claim for loss of energy but the claim has been rejected during good faith negotiations which is detailed at Exhibit P-27, aggregating to 5607240

units upto July, 2021 because of Grid instructions issued by the HPSEBL to reduce the energy generation and the same is calculated at the rate of Rs. 3.17 per unit which comes to Rs. 1,72,41,701/-. Also averred that said rate is also under challenge before the Hon'ble High Court.

Claim No. 4

Late payment Surcharge.

11. It is averred that the Petitioner has suffered loss due to breach of contract on the part of the Respondent. Clause 8.3 of the PPA in this regard provides as follows:-

“In case the payment of any bill for charges payable under this Agreement is delayed beyond a period of 60 days from the presentation of the Bill, a late payment surcharge at the simple interest rate of 1.25 @ per month shall be charged by the Company for the actual number of days by the payment is delayed.”

12. Since the Respondent has failed to make the payment as per PPA, depriving the Petitioner of its right to reap the benefits or earn interest out of its rightful dues and since the amount has been withheld without any justification, the Petitioner is entitled to claim late payment surcharge/interest on the outstanding dues @ 1.25% per month beyond 60 days of the presentation of the bills.

Reply of the Respondent

13. The Petition has been resisted by the Respondent by filing reply that the Petition is neither maintainable nor competent in as much as the Petitioner has

directly prayed for the adjudication of the dispute by way of arbitration which is inconsistent with the spirit of the Electricity Act, 2003. Specific reply to the claims has been made as under:-

Claim No. 1

14. It is averred that the Petitioner has signed the PPA on 29.09.2017 with the Respondent at the Generic Levelized Tariff and Article 16.2 of the said agreement reads as under:-

“if all the generating units are not synchronized on or before the scheduled date of synchronization specified for different generating units, the company shall be liable to pay to the HPSEBL Liquidated Damages for the delay @ Rs.1000 (one Thousand) per MW for each day of delay beyond the Scheduled Date of Synchronization subject to maximum if 180 days after which it would constitute Company Event of Default.”

15. Further Clause 2.2.69 of the PPA provides as under:-

“Scheduled Date of Synchronisation means the date by which the Company scheduled to Synchronise and connect the unit, for the first time, with the Grid System as per the provisions of the Implementation Agreement”

16. It is averred that as per the IA signed on 15.02.2012, the date of synchronization is not provided but defines date of SCOD which means the date by which the first unit of the Project with the Grid is synchronized as per the

construction schedule. The construction schedule was duly approved by the GoHP which was made integral part of the PPA dated 29.09.2017 with consensus of the parties vide which the Commercial Operation Date of Units 1 and 2 of the project were 15.03.2017 and 10.04.2017 respectively, which was never revised. It is averred that as per the letter of the Superintending Engineer (Design) dated 27.02.2018 (Exhibit P-7), both the units of the Project were synchronized with Grid on 23.02.2018 and that the Petitioner could not synchronize the Project on or before scheduled date of synchronization as mentioned in the Schedule annexed to the PPA and, therefore, the Petitioner Company was liable to pay Liquidated Damages to the Respondent in terms of Article 16.2 of the PPA and vide letter dated 15.10.2018 (Exhibit P-8), the Respondent asked the Petitioner to deposit the Liquidated Damages to the tune of Rs. 3,60,000/- for the delay at Rs. 1000/- per MW for each day of delay beyond the scheduled synchronization date of the Project subject to maximum 180 days, which was not deposited by the Petitioner even after six months. Therefore, the Respondent has deducted the same from energy bill of March, 2019. As per the Respondent, the demand made by the Respondent for the Liquidated Damages is just and proper as there was an unjustifiable delay in synchronization of the units of the Project.

Claim No. 2

17. As per the Respondent, the Petitioner intimated vide letter dated 30.11.2017 that the Project is likely to be synchronized with the Grid in the 2nd

week of December, 2017 and requested for nomination of Er. Anil Chander Sharma as an Independent Engineer to witness the commissioning tests. Accordingly, the Respondent vide letter dated 08.12.2017 (Exhibit P-16) issued necessary directions to its officers/ officials for compliance of various stipulations of the PPA regarding synchronization and commissioning of the Project including directions relating to metering and billing of Project and nominated Er. Anil Chander Sharma to act as an Independent Engineer. The Petitioner also approached the Office of Superintending Engineer (Design), Sunder Nagar with a request to depute the Officers for the purpose of synchronization. The Superintending Engineer vide mail dated 02.12.2017 (Annexure R-3) asked the Petitioner for submitting approval of Chief Electrical Inspector, P&T and M&T reports, GTP of all the equipments, Inter-connection Agreement and Pre-commissioning Test Reports to proceed further in the matter. On 16.12.2017 (Annexure R-4), the Superintending Engineer (Design), Sunder Nagar raised certain observations regarding GTP ACSR Conductor and 33 kV CT which was approved on 26.12.2017. However, vide letter dated 19.01.2018, the Petitioner intimated the Superintending Engineer (Design) of synchronization of the project on 16.12.2017 but the Superintending Engineer (Design) vide letter dated 23.01.2018 and 01.02.2018 (Annexure R-5) observed that the Project was to be synchronized with the Grid in the presence of the Independent Engineer, field officers of the Respondent and representatives of the office of the Superintending Engineer (Design) of the Respondent and asked

the Petitioner as to how the Project was energized and synchronized with the Grid prior to the approval of the Chief Electrical Inspector, which was obtained by the Petition on 18.01.2018. Thus, the synchronization conducted in their absence is of no relevance and was in violation of the Govt. of Himachal Pradesh notification No. MPP-F(1)2/2005-XI dated 17.08.2016.. The Petitioner vide letter dated 15.02.2018 (Annexure R-6) requested the Superintending Engineer (Design) to depute the representative from their office for commissioning of the Project and also to visit the power house. It is averred that on 23.02.2018, the representatives of the Design Office of the Respondent visited the Project for official Synchronization and Commercial Operation and accordingly, synchronized both Units of the Project with Grid on 23.02.2018 and also witnessed/ conducted the commissioning tests in the presence of Independent engineer and representatives of the Petitioner and intimated vide letter dated 27.02.2018 (Exhibit P-7) all quarter concerned of synchronization and further, recommended the Project for trial run of 15 days w.e.f. 23.02.2018. Thus, both units were connected to the Grid on 23.02.2018 in accordance with prudent practices and, thus, the sale/ purchase of energy shall commence w.e.f. 23.02.2018. Accordingly, the payments of energy bills w.e.f. 23.02.2018 only has been considered in accordance with the PPA and the bills raised prior to 23.02.2018 are irregular and cannot be processed. It is averred that the Respondent vide letter dated 08.04.2019 (Annexure R-7) has intimated the Petitioner that for injection of power prior to 23.02.2018, the Petitioner may

approach the office of the Chief Engineer SLDC, HPLDC Totu to raise bills as per the provisions of Regulation 5 (5) of Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations 2014 notified on 06.01.2014. It is averred that further action required for payment of infirm power prior to 23.02.2018 is pending on the part of the Petitioner.

Claim No. 3

18. It is averred that the PPA dated 29.09.2017 (Annexure R-1) explicitly provide that no deemed energy benefit shall be applicable during the period of interim connectivity i.e. at 33/11 kV Sub-station Bithloo of the HPSEBL or any other interim interconnection point agreed between the HPSEBL and the Petitioner. The Petitioner has interim connectivity at 33 kV Sub-station of the HPSEBL at Bithloo as per the provisions of Connection Agreement and PPA dated 29.09.2017 and project is still evacuating its power under the interim arrangement. It is averred that as per the PPA, the permanent connectivity was granted to the Petitioner at Chambi Sub-station of the HPPTCL as connectivity at Bithloo was interim but ever since the commissioning of the Chambi Sub-station in the year 2021, the Petitioner has not shifted to said Sub-station. Also, averred that presently the proposal of the Petitioner to get permanent Inter-connection Point at 33 kV Bithloo Sub-station is pending consideration and, thus, the arrangement as provided to the Petitioner is interim in nature. It is averred that as per Clause 4.4 of the PPA the deemed generation benefit under

Clause 6.4 or any other provisions of the PPA for the period during which power is evacuated under such interim arrangement is not admissible to the Petitioner.

Claim No. 4

19. It is averred that the Petitioner is neither entitled for any payment for late payment surcharge nor interest as claimed.

REJOINDER

20. In rejoinder, the contents of the reply have been denied and those of the Petition were re-affirmed. It is reiterated that as per the SIA, the Scheduled date of synchronization was 12.03.2018 and the construction schedule which was attached with the PPA was got approved from the HIMURJA at the time of approval for connectivity to the Project in the year which stands amended in view of the SIA. Not only this, a force majeure event occurred at the project site on 21.06.2017 and the Petitioner requested HIMURJA for extension of time approved under construction schedule which has been duly extended and the scheduled date of synchronization of the Project was 11.03.2018.

SUBMISSIONS OF THE PETITIONER & RESPONDENT

21. We have heard Sh. Arun Sharma, Director of the Petitioner and Ms. Vandana Thakur Ld. Vice Counsel for Sh. Surinder Saklani, Ld. Counsel for the Respondent as also Sh. Kamlesh Saklani Authorized Representative for Respondent and have perused the written submissions of the Petitioner as well.

22. Sh. Arun Sharma, Director of Petitioner has submitted that the Respondents has not considered the SIA dated 21.04.2017 and letter of

HIMURJA dated 03.04.2018 while computing the date of synchronization and merely on the basis of earlier date of COD allegedly annexed with the PPA, as its, approved schedule has illegally deducted the Liquidated Damages from the energy bills of the Petitioner which are required to be reimbursed as there was no delay in achieving the date of synchronization/completion of Project which has been synchronized successfully with the Grid on 16.12.2017 as per procedure. He has also submitted that ever since the synchronization, the energy was regularly supplied from the Project w.e.f. 16.12.2017 but the payments has been illegally withheld. Not only this, even the permanent connectivity has not been provided to the Petitioner at Bithloo and for said reason, the Petitioner has sustained huge financial loss due to back down generation instructions.

23. Sh. Kamlesh Saklani, Authorised Representative of the Respondent on the other hand has submitted that the synchronization allegedly conducted on 16.12.2017 is improper and not according to the Notification No. MPP-F(1)Z/2005-XI dated 17.08.2016 and thus, the tests were re-conducted on 23.02.2018 as per established procedure and the Project was declared synchronized w.e.f. 23.02.2018. Hence, the energy shall be deemed to have been properly supplied from 23.02.2018 and energy as supplied prior to 23.02.2018 w.e.f. 16.12.2017 is improper and the Petitioner has been directed to approach SLDC in this regard. He has also submitted that vide PPA, permanent connectivity to the Project of Petitioner was provided at Chambi Sub-station but despite said station being commissioned, the Petitioner has not shifted to said

station and has persisted with interim arrangement. Therefore, the Petitioner is not entitled for the loss as claimed.

24. We have carefully gone through the submissions, as also the written submission of the Petitioner and have carefully gone through the entire record.

POINTS FOR DETERMINATION

25. Out of the record and submissions of parties the following points arise for determination in the present case:-

Point No. 1:

Whether the Project has been synchronized with the Grid system on 16.12.2017 well before the scheduled date of synchronization and the Liquidated Damages of Rs. 3.60 lacs have been wrongly deducted from the energy bills of March, 2019 raised by the Petitioner?

Point No. 2:

Whether the Project had been successfully synchronized with the Grid on 16.12.2017 and Respondent has wrongly withheld the energy bills amounting to Rs. 1,40,748/- (December, 2017), Rs. 2,80,307/- (January, 2018), Rs. 1,98,997/- (upto 22nd February, 2018) amounting to Rs. 6,20,052/- despite supplying energy for the period from 16.12.2017 to 22.02.2018 ?

Point No. 3 :

Whether even after 2 years of Interim Connectivity and Submissions of application for permanent connectivity after 28.01.2018, the Respondent has failed to provide permanent connectivity to the Project and kept on issuing

instructions to the Petitioner to back down energy generation resulting in loss of Rs. 1,72,41,701/-?

Point No. 4 :

Whether the Petitioner is entitled for late payment surcharge at simple interest of 1.25% per month on the Liquidity Damages, non-payment of energy bills and loss of generation?

Point No. 5: (Final Order)

DECISION ON POINTS FOR DETERMINATION

26. For the reasons to be recorded hereinafter in writing, while discussing the aforesaid points, our point wise findings are as under:-

- Point No. 1:** Partly yes
Point No. 2: Yes
Point No. 3 : No
Point No. 4 : No
Point No. 5: (Final Order)

The Petition partly allowed per operative part of the order.

Reasons for findings

Point No. 1

27. It is the case of the Petitioner that a Supplementary Implementation Agreement (Exhibit P-2) was signed by it with the Government of HP on 21.04.2017 vide which time period of completion of Project was specified as 24

months from 13.03.2016 meaning thereby that the Project could have been synchronized and commissioned any time prior to 12.03.2018. Clause 3.1 of said Agreement is reproduced as under:-

“The First Party agrees to permit the Second Party, for the Project Leond (2.00 MW) capacity, to establish, own, operate and maintain the Project for a period of 40 (forty) years and the date shall be reckoned after Twenty Four (24) months from 13.03.2016 (13th March, 2016), the date of start of work at site. After the expiry of the Implementation Agreement period of 40 (forty) years, the project shall revert to the First Party free of cost and free from all encumbrances. However, the First Party would have the option to grant a further extension for a period mutually agreed upon between the First Party and the Second Party after re-negotiations of terms and, conditions of the already signed Agreement/this Agreement.”

28. As per Petitioner, once fresh time period was defined and the period to establish, own, operate and maintain the Project for a period of 40 years was agreed to be reckoned after 24 months from 13.03.2016, the date of synchronization of the Project as 15.03.2017 and 10.04.2017 for the first and second units respectively, as shown in the construction schedule to the PPA dated 29.09.2017 (Annexure R-1) is of no consequence. Further the Petitioner had also taken up the matter with HIMURJA and the HIMURJA vide letter dated 03.04.2018 (Exhibit P-11) has conveyed the approval of extension of the

time period without extension fee w.e.f. 15.08.2012 to 12.03.2016 and that Project was to be completed by 11.03.2018 after allowing 24 months for completion.

29. Significantly, the letter dated 03.04.2018 (Exhibit P-11) is not part of PPA as PPA was signed on 29.09.2017 whereby the Petitioner has agreed to pay LD charges. SIA dated 21.04.2017 (Exhibit P-2) no doubt, shows that the Respondent was aware of the extension of the date of completion of the Project but when the Joint Petition for the approval of the PPA was filed, a schedule was annexed to the Petition showing date of completion as 01.07.2017 and 10.07.2017 with schedule commercial date of the Project as 15.07.2017, as evident from Page No. 38 in Joint Petition No 41 of 2017. In said schedule, the Petitioner had agreed to synchronise the Project well before 15.07.2017.

30. It is the own case of the Petitioner that Power Purchase Agreement dated 29.09.2017 was signed and executed with the Respondent. The Respondent has come out with a stand that as per the Schedule annexed to the PPA dated 29.09.2017, the dates of synchronization of both the units the Project were 15.03.2017 and 10.04.2017. However, as observed above, the schedule as annexed to the Petition at Page No. 38 for the approval of PPA in Petition No 41 of 2017 shows that the dates of synchronization of both units were 01.07.2017 and 10.07.2017 respectively from 13.03.2016 which appears to be in consonance with SIA which too shows that a period of 24 months for completion of the Project is to be reckoned from 13.03.2016. Thus, it is safe to conclude that the

Petitioner itself had agreed for the above dates of synchronization as 01.07.2017 and 10.07.2017 for the 1st and 2nd Units.

31. The entire Petition is silent that the Petitioner informed the Respondent that due to the circumstances beyond control and on account of force majeure, the matter had been taken up with Government of HP for extension of time of synchronization as agreed/claimed. The date of synchronization and the date of completion in the present matter are to be strictly followed as agreed and it is the Petitioner which had signed the schedule that it shall synchronise the Project well before 15.07.2017. Hence, in the present matter, the date of synchronization and date of completion are different and only the date of completion was extended to 24 months beyond 13.03.2016 but no change in the date of synchronization was allowed/permitted for the Project.

32. The Respondent on the basis of Power Purchase Agreement dated 29.09.2017 were under a bonafide belief that a specified power from the Project of the Petitioner would be supplied to them but the Project was not synchronized on due dates and was synchronized only on 16.12.2017, much after the execution of the PPA and agreed date of synchronisation. Therefore, the Respondent has suffered loss on account of non supply of such power ever since the signing of PPA. Had the dates of synchronization been also changed, the Respondent would have made suitable adjustment/arrangement of arranging the Power but since the Petitioner has kept the Respondent at dark and delayed the synchronization of the Project as agreed, it is the Respondent which has suffered

the loss which was required to be compensated by the Petitioner as per the PPA. In the circumstances, as agreed in the Power Purchase Agreement dated 29.09.2017, the LD charges have rightly been imposed. However, as observed above, the PPA was signed only on 29.09.2017, when both parties bilaterally agreed for the payment/recovery of LD charges, thus, said charges are required to be recovered from 29.09.2017 till 16.12.2017 and not from 10.03.2017 as claimed. Thus, the recovery as effected is required to be re-worked and LD charges from 29.09.2017 till 16.12.2017 are required to be recovered from the Petitioner.

33. Point No. 1 is accordingly answered partly in favour of the Petitioner and partly against it.

Point No. 2

34. Both the parties have come out with rival claims about the scheduled date of synchronization of the Project. As per the Petitioner, the approved date of synchronization of the Project by the Government of HP is 11.03.2018, as per letter dated 03.04.2018 of HIMURJA (Exhibit P-11) and SIA dated 21.04.2017 (Exhibit P-2) and the project has been synchronized on 16.12.2017 but the stand of the Respondent, on the other hand, is that as per construction Schedule Annexed to the PPA by the Petitioner, the date of synchronization of the Project was 15.03.2017 for the 1st Unit and 10.04.2017 for the 2nd Unit, which were not adhered to and as per Clause 16.2 of the PPA dated 29.09.2017, the Petitioner was liable to pay the LD charges and, thus, the LD charges have been rightly

imposed and recovered from the energy bills of the Petitioner. Also it is the stand of the Respondent that the project was synchronized on 23.02.2018.

35. As per the Petitioner, the date of start of construction as per IA dated 15.02.2012, has subsequently been revised by the Government of HP by signing the SIA on 21.04.2017 (Exhibit P-2) and on the strength thereof, the Petitioner has submitted that the construction schedule which had been annexed to the PPA dated 29.09.2017 showing the dates of synchronization as 15.03.2017 and 10.04.2017 of Units-I and Unit-II respectively are of no consequence. The perusal of the record shows that the Petitioner signed SIA with the Government of HP on 21.04.2017 (Exhibit P-2) and Clause 3.1 of said SIA shows that the date of completion of the Project shall be reckoned after 24 months from 13.03.2016. Clause 3.1 of the SIA dated 21.04.2017 is reproduced as under:-

“The First Party agrees to permit the Second Party, for the Project Leond (2.00 MW) capacity, to establish, own, operate and maintain the Project for a period of 40 (forty) years and the date shall be reckoned after Twenty Four (24) months from 13.03.2016 (13th March, 2016), the date of start of work at site. After the expiry of the Implementation Agreement period of 40 (forty) years, the project shall revert to the First Party free of cost and free from all encumbrances. However, the First Party would have the option to grant a further extension for a period mutually agreed upon between the First Party and the Second Party after re-negotiations of terms and conditions of the already signed Agreement/this Agreement.”

36. It is apparent from the aforesaid that the Petitioner was permitted to operate the plant for a period of 40 years to be reckoned after 24 months from 13.03.2016 meaning thereby that the Project was to be completed on or before 12.03.2018. This fact is further evident from the letter dated 03.04.2018 of the HIMURJA (Exhibit P-11) which shows that the date of the completion of the Project was fixed 11.03.2018 after allowing 24 months for completion of the Project. The Respondent in its reply has not uttered even a word that SIA dated 21.04.2017 has not been executed by the Petitioner with the Government of HP. Here it is relevant to refer to reply of Respondent that as per IA dated 15.02.2012, the Scheduled Commercial Operation Date of the Project shall mean the date by which the second party i.e. Petitioner shall have synchronized first unit of the Project with the Grid as per the construction schedule.

37. Referring to Clause 2.2.69 of the PPA dated 29.09.2017 which defines the scheduled synchronization date/scheduled date of synchronization as under:

“Scheduled Date of Synchronisation means the date by which the Company scheduled to Synchronise and connect the unit, for the first time, with the Grid System as per the provisions of the Implementation Agreement”

38. Thus, the question which arises for consideration is whether or not the Project was successfully synchronized on 16.12.2017 or the same was commissioned on 23.02.2018. It is evident from letter dated 02.11.2017 (Exhibit P-15) that the Petitioner intimated the Director, (Power House Designs), Sunder Nagar, Distt. Mandi that the erection work of the Project is complete and pre-

testing of the plant is planned to be started from 15 November, 2017 and a request was made that site inspection of the Project may be conducted in the 2nd or the 3rd week of November, 2017. On 08.12.2017, a letter (Exhibit P-16) was written by the HPSEBL to the Superintending Engineer, (Design) Sunder Nagar, Sr. Executive Engineer, Protection and Testing Division, Kangra and Sr. Executive Engineer, Electrical Division, Shahpur that the Project has declared the Units/Project ready for synchronization with HPSEBL Grid system and Petitioner has desired that the Project be permitted to be synchronized and, thus, instructions were issued to take further necessary action for the synchronization of the Project. Letter dated 19.12.2017 (Exhibit P-17) of Sr. Executive Engineer, Protection and Testing Division, HPSEBL shows that testing of the Project was carried out on 16.12.2017 and detailed report of the tests was sent to the Petitioner and Superintending Engineer, Protection and Testing Circle, Hamirpur and Sr. Executive Engineer, Shahpur.

39. The Petitioner in continuation of letter dated 02.11.2017 (Exhibit P-15) enclosed the reports of P&T Engineers & Commissioning Report, GTPs of Turbine and Generator, copy of interconnection agreement, letter regarding Independent Engineer etc. vide letter dated 21.12.2017 (Exhibit P-18) and informed the Superintending Engineer (Design) Sunder Nagar that both the units were synchronized with the Grid on 15 and 16 December, 2017 in the presence of team of P&T Engineers and Independent Engineer and the plant has been put on trial run and the relays have been reset in the Gaj Power House. It was also

intimated that Engineers of Chief Electrical Inspector are visiting the site on 26/27 December and their report will be submitted accordingly, with the report of the Independent Engineer as and when the Petitioner will be in receipt of the said reports.

40. The Petitioner has annexed with rejoinder a tentative approval of Chief Electrical Inspector dated 19.09.2017, report of the Independent Engineer received on 25.12.2020 alongwith certificate Annexure-A to said letter and other reports i.e. Annexures 1(a), 1(b), 1(c) and 1 (d) . It is evident from the letter dated 25.12.2020 of the Independent Engineer that as desired by the letter of HPSEBL dated 08.12.2017, he has witnessed the capacity of the performance testing carried out in Units-I and II of the Project. Said Independent Engineer also issued the aforesaid certificate and enclosed test reports i.e. Turbo-generator specifications, Load off throw testing etc. The Independent Engineer Sh. A.C. Sharma had been nominated by the HPSEBL/Respondent. As observed above, the Petitioner had already intimated the HPSEBL of the readiness of the Project for testing and synchronization on 02.11.2017. It is also evident from letter dated 15.02.2018 Annexure R-6 that Pre-commissioning tests were conducted from 07.12.2017 to 14.12.2017. If this is so, there was no occasion for the Respondent to delay the testing and synchronization of the Project which was neither in interest of the Petitioner nor in the interest of HPSEBL. Therefore, the letter (email dated 02.12.2017 Annexure R-3) of the Superintending Engineer, Design to call for additional/fresh documents in response to letter of the

Petitioner dated 02.11.2017, after the huge delay, is beyond comprehension. Similarly, the subsequent letters of the Superintending Engineer (Design) Sunder Nagar dated 16.12.2017 (Annexure R-4) is of no consequences. Since the Project had been synchronized on 16.12.2017 with the Grid, after all mandatory tests and report of Chief Electrical Inspector had also been received, the another letter dated 23.01.2018 (Annexure R-5) of the Superintending Engineer (Design) Sunder Nagar is also of no consequences to say that it was not possible to understand as to how the Project was synchronized. Similarly, the letter dated 01.02.2018 of the Superintending Engineer (Design) that synchronizations of the Power House to Grid in the absence of the representative of the office of Superintending Engineer, Design is in violation of Notification No. MPP-F(1)2/2005-XI, dated 17.08.2016 issued by the Government of HP is also of no consequence as merely because the representative of the Superintending Engineer (Design) failed to attend the commissioning and other tests at the time of synchronization despite knowledge, the reports of the Independent Engineer and other tests cannot be ignored. Even otherwise, the Respondent has misread and misconstrued the letter dated 15.02.2018 (Annexure R/6) of the Petitioner that the Petitioner had requested for sending the team for the synchronization of the Project and witnessing the Commissioning tests. Undisputedly, the Petitioner has supplied the power from the Project ever since 16.12.2017, which has been acknowledged by the Respondent. It is,

therefore, established that the Project was successfully synchronized on 16.12.2017.

41. The stand of the Respondent that the Petitioner had conveyed the date of synchronization as 15.03.2017 and 10.04.2017 for the 1st and 2nd units respectively, as per the construction schedule annexed to PPA dated 29.09.2017, is without any substance and does not come to the rescue of the Respondent as the Petitioner had achieved synchronization on 16.12.2017, as per the schedule annexed to the Petition for approval of PPA well before three months, but instead of appreciating the Petitioner for the same, the energy bills have been withheld.

42. Even the stand of Respondent regarding the construction schedule which had been annexed to PPA showing dates of 15.03.2017 and 10.04.2017, as the dates of synchronization, is utterly wrong. It is the claim of the Petitioner that he signed SIA with the Government of HP on 21.04.2017 (Exhibit P-2). The PPA was approved on 29.09.2017 (Annexure R-1). The Joint Petition for approval of PPA was filed on 30.06.2017, being Petition No. 41 of 2017. The Petitioner had annexed SIA dated 21.04.2017 with said Petition and PPA was accordingly approved vide order dated 24.08.2017 and SIA was also made part and parcel of the PPA. The entire reply of Respondent is silent about the SIA date 21.04.2017 or that PPA dated 29.09.2017 was not approved on the strength of the SIA dated 21.04.2017. Importantly, the alleged construction schedule showing the dates of synchronisation as 15.03.2017 and 10.04.2017 for units 1 and 2 respectively was

not approved by the Commission. Even the record of Petition No. 41 of 2017 for approval of PPA shows that one more schedule of completion was annexed with the Petition showing Scheduled Commercial Operation dates of 1st and 2nd units of the projects as 01.07.2017 and 10.07.2017 with schedule commercial date of the Project as 15.07.2017. This clearly shows that dates of synchronization were not 15.03.2017 and 10.04.2017 as projected by the Respondent and rather the same were 01.07.2017 and 10.07.2017 for 1st and 2nd Units respectively. Once the date of completion as per the SIA is 12.03.2018, the alleged construction schedule which had been approved pursuant to the IA dated 15.02.2012 had automatically merged in the dates of synchronization as mentioned in the construction schedule which was part of the Petition for approval of PPA. Hence, the dates of synchronization 1st and 2nd Units of Project were not 15.03.2017 and 10.04.2017 respectively, as alleged. Undisputedly, the energy has been supplied by the Petitioner to Respondent ever since 16.12.2017 which has also been verified by the Respondent. The Respondent has not placed on record any documents that the Project had to be shut down due to any complications/faults after 16.12.2017, thus, it can safely be construed that the Project had been running satisfactorily ever since 16.12.2017. Since, the Project was validly synchronized on 16.12.2017, there was no occasion to treat said Power w.e.f. 16.12.2017 to 22.02.2018 as improper and irregular and the payment of energy bills qua the same have illegally been withheld. Hence, the Petitioner is entitled for the payment of such bills as claimed.

43. This point is accordingly answered in favour of the Petitioner and against the Respondent.

Point No. 3

44. As per the Petitioner, the connectivity to the Project was applied on 28.01.2016 which was granted on 07.02.2017 and the Petitioner signed connection agreement for evacuation of power with the Respondent on 04.08.2017 (Exhibit P-23). According to him, the interim connectivity was granted to the Project initially for two years at 33 kV Sub-station Bithloo (Gaj Sub-station). It is also the case of the Petitioner that after lapse of period of two years of interim connectivity, an application was submitted for permanent connectivity (after 28.01.2018). In the meanwhile, the Respondent allowed interim connectivity to Gaj-III SHP (5.00 MW) for evacuation of power of Gaj-II SHP at Bithloo Sub-station in the year 2019-20 (Exhibit P-24). As per the Petitioner, even after submission of the application for permanent connectivity, repeated instructions were issued for backing down energy generation to the Project of the Petitioner, as such, the production of energy was substantially reduced to 1 MW, which was done earlier due to the delay in allowing permanent connectivity and after commissioning of Gaj-III, to accommodate the evacuation of power generation of Gaj-III SHP, despite the capacity constraints of evacuation in 33 kV system. All this has resulted in huge financial loss to the Petitioner as mentioned in Log Sheets (Exhibit P-28). It is also claimed by the Petitioner that during the currency of interim connectivity, an application for

permanent connectivity at Sub-station, Bithloo was submitted but no decision on said application was taken.

45. The Respondent, on the other hand has come out with the stand that the connectivity at Bithloo 33 kV Sub-station was only interim and the Project of the Petitioner was to be finally connected at 132/33 kV Chambi Sub-station of HPPTCL. Clauses 2.2.46 and 2.2.47 of the Power Purchase Agreement are relevant in this regard, which are reproduced as under:-

2.2.46 "Interconnection Facilities" means all the facilities which shall include, without limitation, switching equipment, protection, control and metering devices etc. for the incoming bay(s) for the Project Line(s), to be installed and maintained by the HPPTCL at 132/33 kV Sub-station Chambi. However as an interim arrangement (i.e. till commissioning of Chambi Sub-station of HPPTCL) the project shall be connected at existing 33 kV sub-station of HPSEBL at Bithloo through 33 kV S/C dedicated line on D/C structure at the cost of the company to enable evacuation of electrical output from the Project in accordance with the Agreement.

2.2.47 "Interconnection Point" means the physical touch point where the Project Line(s) and the allied equipment forming a part of the Interconnection Facilities are connected to the existing 33 kV Sub-station at Bithloo during interim connectivity and finally connected at 132/33 kV Chambi sub-station of HPPTCL on its commissioning.

46. According to the Respondent, as per Clause 6.4.1 of the PPA dated 29.09.2017 (Annexure R-I), no deemed energy benefits were applicable during the period of interim connectivity i.e. 33/11 kV Sub-station Bithloo and Clause 4.4 of the PPA specifically provides that the deemed generation benefit under Clause 6.4 or any other provision of the PPA shall not be availed by the company/Petitioner for the period during which power is evacuated under such arrangement i.e. interim arrangement and thus, the Respondent is not liable to compensate the Petitioner for the energy loss as projected.

47. A perusal of the reply of the Respondent shows that 132/33 kV Chambi Sub-station of the HPPTCL, which is the permanent interconnection point for the Project, has been commissioned during 2021 but the Petitioner has not shifted to said permanent interconnection point and that the proposal of the Petitioner to get permanent interconnection point at 33 kV Bithloo Sub-station is under consideration and till such time, the connection of the Project shall be interim.

48. The Petitioner has placed on record copy of interim arrangement allowed to Gaj-III SHP Exhibit P-24, back down instructions depicted in Exhibit P-25 to P-28 but the fact remains that as per PPA, the Petitioner has been allowed permanent connectivity at Chambi Sub-station. The Petitioner has not pointed out any hardship that the Chambi Sub-station is not feasible or that Bithloo Sub-station has enough capacity for evacuation of Power. Similarly, the Petitioner has also not been able to show that there was some other alternate arrangements

for Gaj-III SHP to evacuate its power or that entire power of the Gaj-III SHP 5.00MW was being evacuated and back down instructions were being issued only in respect of the Project of the Petitioner. Once the Gaj-III SHP was also commissioned, it was incumbent upon the Respondent to evacuate the power from both the Projects i.e. Project of the Petitioner and the Project of Gaj-III and since the evacuation arrangement was interim in nature, it was imperative and necessary to ensure the flow as per the capacity of the line and to impart the back down instructions for the safety of the equipment. Since the permanent connectivity to the Petitioner had been provided at Sub-station Chambi 132/33 kV, which has been commissioned, it is for the Petitioner to shift to the permanent connection immediately to avoid generation loss, as projected, therefore, the documents Exhibit P-25 to P-28 above are of no help to the Petitioner and the Petitioner is not required to be compensated for the energy loss as claimed. Otherwise also, it was agreed between the parties that the power has to be evacuated in a joint mode with Gaj top SHP for two years or till the commissioning of 132/33 kV Chambi Sub-station of HPPTCL, whichever is earlier.

49. Hence, this point is decided against the Petitioner and in favour of the Respondent.

Point No. 4

50. It is substantiated on record that the Project was synchronized successfully on 16.12.2017 and ever since the power is being injected to

the HPSEBL Grid but the bills Exhibit P-19 to P-21 for the months of December, 2017 (16.12.2017) to 22.02.2018 have been withheld without any reason. It is the stand of the Respondent that though the power of the Petitioner's project has been received but said power is improper. Though the Project has been successfully synchronized, as observed above, yet there was dispute between the parties over the synchronization and COD of the Project and the HPSEBL was not sure whether the Project had been synchronized on 16.12.2017 or 23.02.2018. Thus, the Commission deem it proper and appropriate, not to award late payment surcharge as claimed. This point is accordingly decided against the Petitioner.

Final Order

51. In view of our aforesaid discussion and finding, the Petition succeeds in part and accordingly, partly allowed. The Claim No. 1 regarding reimbursement of Liquidated Damages charges of Rs. 3,60,000/- is partly allowed and the Respondent is directed to reimburse the same to the Petitioner after recalculating the LD charges w.e.f. 29.09.2017 to 16.12.2017. Claim No. 2 qua Energy Bills for net saleable energy w.e.f. 16.12.2017 to 22.02.2017 is allowed and the Respondent is ordered to pay the same to the Petitioner. The Points No. 3 & 4 are, however, decided against the Petitioner.

The pending CMAs, if any, are also disposed off.

The file after needful be consigned to records.

Announced
07.01.2023

-Sd-
(Shashi Kant Joshi)
Member

-Sd-
(Yashwant Singh Chogal)
Member (Law)

-Sd-
(Devendra Kumar Sharma)
Chairman

EMPEROR