

M/s Everest Power Pvt. Ltd. Vs. the HPPTCL

Petition No. 46 of 2021

19.08.2023

Present: Sh. Rajnish Maniktala, Ld. Senior Advocate along with Sh. Vipul Sharda, Ld. Counsel for the Petitioner.
Sh. Vikas Chauhan, Ld. Counsel for the Respondent
alongwith Sh. Virender Kumar, DGM (C&M) .

DAILY ORDER

As directed, M/s Everest Power Pvt. Ltd. have not complied with the Order dated 04.08.2023.

Sh. Rajnish Maniktala, Ld. Senior Advocate for the Petitioner seeks further time for making payment as directed by the Commission that due to circumstances beyond control of the Petitioner, on account of recent floods, the power house of the Petitioner has to shut down and the Petitioner is not in a position to make the payment of the whole amount.

An application under Section 94 (2) of the Electricity Act, 2003 also filed on behalf of the Petitioner that without prejudice to the rights and remedies of the Petitioner, as may be available under the law to challenge the order dated 14.08.2023 of the Hon'ble APTEL, the present application is being preferred in most emergent circumstances. It is mentioned in the application that the Respondent has already encashed the bank guarantee of Rs. 5,00,00,000/- which is liable to be deducted from the total amount payable to the Respondent, out of total amount of Rs. 14,09,29,538/-, pending on the part of the Petitioner to the Respondent which shall be paid

in six monthly installments w.e.f. 15.09.2023. Further that out of the 100 MW, which is being generated in the Project of the Petitioner, the Govt. of HP is also receiving 12% of the power and 1% on account of local area development fund and said 13% share against the said amount is also required to be adjusted.

As per the Petitioner, due to heavy and devastating rains, heavy silt was accumulated in the Dam resulting in forced shut down of the Project w.e.f. 09.07.2023. Not only this, the transmission system from Malana-II HEP to the Respondent, 220 kV Charor system through which the energy generated from Malana-II HEP was being evacuated into the grid also got impacted with breakdown of two number of towers. Hence, the power from Malana-II HEP cannot be evacuated, even if the plant is restored. Not only this, due to sudden cloud burst in the catchment area on 24.07.2023, the radial gates of the Dam in partial open condition were attempted to be fully opened but due to high silt and debris, the said gates got jammed and consequently, the water level reached the Dam top and started overflowing through the top of the Dam and the Malana-II HEP has not been restored till date which may take considerable time. It is averred that the Petitioner is hard pressed based on lack of cash flow and seeking an indulgence of the Commission and in case the prayer is not granted, the Petitioner would suffer irreparable loss and injury. Therefore, the Petitioner be permitted to make the payment of the Transmission charges, as stated in the order dated

04.08.2023, in six monthly installments of 10 days each. Sh. Manikala also states that the six installments shall be monthly and not of 10 days.

The copy of the application was supplied to Sh. Vikas Chauhan, Ld. Counsel who submits that the present application is abuse of the process of this Commission as the Petitioner has evaded the payment ever since 2019 when they started evacuating the power from their Project through the system of the Respondent. He also submits that the Commission has directed the Petitioner to pay only the 35% of the demand/ bill raised by the Respondent as only 100 MW power was said to be evacuated through the system of the Respondent. According to him, the payment is necessary for the financial sustenance of the Respondent failing which it would not be possible to operate and maintain the line and evacuate the power. He also submits that the Petitioner had enough time since, 2021 to make the payment and comply with the order but the payment has been delayed on one pretext or the other. According to him, the application, as submitted is misconceived and be dismissed.

We have heard Sh. Rajnish Maniktala, Ld. Senior Advocate and Sh. Vikas Chauhan, Ld. Counsel for the Respondent on the application. The orders of the Commission dated 27.11.2021 and 04.08.2023 were assailed by the Petitioner before the Hon'ble APTEL in Appeal/ DFR No. 473 of 2023 but appeal against the said orders was dismissed by the Hon'ble APTEL on 14.08.2023 by observing as under:-

“A reading of Regulation 33(1), as afore-extracted, indicates that the said provision would be attracted only when the transmission system is shared between long and medium-term customers. It is not in dispute that, in the present case, the Appellant is alone using the system for which transmission charges have been levied on them. Further, the liability fastened on the Appellant, in terms of the aforesaid two orders of the Respondent Commission, are based solely on their own admission, (as recorded in the Order dated 27.11.2021), that, as they were evacuating only 100 MW of power, the 2nd Respondent had erred in raising the bill for the entire capacity of the line i.e for 289 MW. It is only because 100 MW represents 35% of the entire capacity of the transmission line of 289 MW, that the Commission had directed them to pay 35% and not the entire 100%. When we asked Ms. Supriya Rastogi, Learned Counsel for the Appellant, as to whether the appellant had, in the present appeal, disputed the finding recorded by the Commission that they had themselves contended that they were liable to pay only for 100 MW and not for 289 MW, Learned Counsel would fairly state that this finding recorded by the Respondent Commission has not been subjected to challenge in this appeal. As it is not in dispute that the interlocutory orders under Appeal were passed mainly on the Appellant’s own admission that they were liable to pay for 100 MW, we are satisfied that the Appeal as filed is wholly Page 6 of 6 misconceived, and does not necessitate interference in the present appellate proceedings. The Appeal fails and is, accordingly, dismissed. Consequently, all the IAs are also disposed of.”

It is, thus, apparent from the aforesaid order that the Hon’ble APTEL has considered each and every aspect of the matter and has dismissed the appeal. However, despite all this, the payment due to the Respondent has not been made. The Petitioner has been using the transmission system of the Respondent since 2019 but not even single penny has been paid till date except the encashment of bank guarantee. As mentioned in the application, two towers of the line are damaged. The Respondent need the money for the maintenance and operation of the transmission line and without payment, it will not be possible for the HPPTCL/Respondent to maintain the line and financially sustain. Since, Sh. Chauhan, Ld. Counsel has objected to the

schedule as mentioned in the application and the Petitioner has already availed huge time for making the payment, the prayer as made in the application for fixing the schedule for payment or modifying orders dated 27.11.2021 and 4.8.2023 can not be granted. Thus, the application filed today by the Petitioner is dismissed.

The Petitioner is directed to comply with the order dated 04.08.2023 well before 22.08.2023.

The Pleading is complete. List this case for hearing on 22.08.2023 at 11:00 AM.

Sd/- (Shashi Kant Joshi) Member	Sd/- (Yashwant Singh Chogal) Member (Law)	Sd/- (Devendra Kumar Sharma) Chairman
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