

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**BHOPAL**

**Sub: In the matter of adjudication of disputes between MP Power Trading Co. Ltd. and M/s Karamchand Thapar & Bros (C.S.) Ltd.**

**Petition No. 36 of 2011**

**DAILY ORDER**

**(Hearing through video conferencing)**

**(Date of hearing: 5<sup>th</sup> January' 2021)**

**(Date of daily order: 13<sup>th</sup> January' 2021)**

**M.P.Power Management Co. Ltd.,**  
Shakti Bhawan, Rampur, Jabalpur.  
(Erstwhile MP Tradeco.)

- **Petitioner**

V/s

**M/s Karamchand Thapar & Bros (C.S.) Ltd.**  
"Thapar House", 25, Brabourne Road,  
Kolkata – 700001

- **Respondent**

Shri Manoj Dubey, Advocate appeared on behalf of the petitioner.  
Shri Sakya Singh Choudhary, Advocate and Ms. Aastha Sharma appeared for the Respondent

M.P. Power Trading Company Ltd (now M.P. Power Management Co. Ltd., Jabalpur) filed the subject petition on 16.05.2011 for adjudication of dispute between MPPMCL and the Respondent with regard to payment of compensation for non off-take of power during the period of 16<sup>th</sup> July' 2009 to 30<sup>th</sup> September' 2009 in terms of the Letter of Intent (LoI) issued by the petitioner.

2. The Commission's daily order dated 21.02.2012 in the subject petition was challenged by the Respondent before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 46 of 2012. By an order dated 11.10.2012, the aforesaid Appeal was dismissed by Hon'ble Appellate Tribunal for Electricity. The review petition filed by the respondent before the Hon'ble Appellate Tribunal for Electricity was also dismissed vide order dated 08.02.2013 passed by the Hon'ble Appellate Tribunal for Electricity. The Respondent filed a Civil Appeal before the Hon'ble Supreme Court against the aforesaid order passed by the Hon'ble Appellate Tribunal for Electricity. By order dated 01.04.2013, the Hon'ble Supreme Court directed that there shall be stay on further proceedings in the subject petition pending before this Commission. Accordingly, the subject petition was kept pending till disposal of the aforesaid Civil Appeal by the Hon'ble Supreme Court.

3. Subsequently, vide order dated 21.10.2019 in IA No. 131571/2018 filed in Civil Appeal No. 2247/2013, the Hon'ble Supreme Court directed the following:

**"IA No. 131571/2018**

***Perused the application for direction.***

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***Let the order be passed by the Madhya Pradesh Electricity Regulatory Commission. However, it may not be given effect to without permission from this Court. The application is disposed of."***

4. In view of the above, the subject petition has again been taken up and hearing was held in this matter on 13<sup>th</sup> October' 2020. Therefore, notices were again issued to the Respondent at the addresses provided by the petitioner.

5. At the hearing held on the 5<sup>th</sup> January' 2021, the Commission has observed the following:

(i) By affidavit dated 2<sup>nd</sup> January' 2021, the Respondent has filed an additional submission in the subject petition. In the aforesaid submission, the Respondent has stated the following reasons for delay in filing the reply:

*"After having received the notice of hearing on 23.11.2020, the Respondent got in touch with their lawyers to consult on the matter. Since the matter is very old and proceedings had been stayed since 2013, it took the respondents sometime to retrieve all the files and documents especially since the functioning of the Respondent office is still significantly affected by the ongoing pandemic and also the fact that some of the personnel who were involved in this present transaction have since left the company, which had created some difficulty in ascertaining all the facts and identifying the necessary papers. In the process, the instruction to the lawyer and the preparation of the additional reply has taken some time. The Respondent's lawyer suffered from COVID-19 and was hospitalized for treatment. The process of instructions, consultation and drafting got further delayed because of this."*

(ii) The Respondent has also raised the following issues in the additional submission:

- (a) Whether a contract was concluded between the parties in the present case, is a matter which is subjudice before the Hon'ble Supreme Court. The direction to this Commission to proceed with the present proceeding is without prejudice to the contentions and the submission that have been raised by the Respondent challenging the existence of the alleged contract between the parties.
- (b) The proposed transaction was for inter-state sale of power and therefore does not lie within the jurisdiction of the Hon'ble State ERC.
- (c) The present transaction between two traders does not fall within the adjudicatory jurisdiction of the Hon'ble State ERC.
- (d) The petitioner has not pleaded nor provided any data in support of its claims on damages.

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- (e) The petitioner has not taken any steps for mitigation of loss and therefore cannot claim damages.
- (iii) Ld. Counsel for the petitioner has sought four weeks' time to file rejoinder on the aforesaid additional submission filed by the Respondent. Ld. Counsel who appeared for the Respondent with his aforesaid contention stated that it would be appropriate if the issues pending before the Hon'ble Supreme Court are not re-adjudicated by this Commission otherwise the whole process for such re-adjudication may become infructuous.
- (iv) Ld. Counsel for the petitioner while disagreeing with the aforesaid contention of the Respondent has sought 10 days' time to file his rejoinder on the additional submission filed by the Respondent. He also stated that he will file written submission/ notes on the issue regarding adjudication in this matter by the Commission on the same issues which are pending before the Hon'ble Supreme Court.
6. Considering the request, the petitioner is allowed to file rejoinder and a written submission on the aforesaid issue within 10 days. A copy of the same be served to the Respondent simultaneously. The Respondent may also file its reply to the aforesaid submissions of the petitioner within 10 days thereafter.

The case is fixed for hearing on **09.03. 2021**.

**(Shashi Bhushan Pathak)**  
Member

**(Mukul Dhariwal)**  
Member

**(S.P.S. Parihar)**  
Chairman