

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,**  
**No. 16 C-1, Miller Tank Bed Area, Vasanth Nagar, Bengaluru- 560 052.**

**Dated: 26.11.2019**

**Present:**

Shri Shambhu Dayal Meena	..	Chairman
Shri H.M. Manjunatha	..	Member
Shri M.D. Ravi	..	Member

**OP No.22/2019**

**BETWEEN:**

M/s Shree Cement Limited,  
114, Hans Bhawan,  
1-Bahadur Shah Zafara Marg,  
New Delhi-110 002.  
(Through its Authorized Signatory  
Mr. Amarjit Singh.)

... **PETITIONER.**

**AND:**

- 1) Power Company of Karnataka Limited (PCKL),  
Room No.501, 5<sup>th</sup> Floor, KPTCL Building,  
Bengaluru-560 009 and Others.
- 2) Bangalore Electricity Supply Company Limited,  
General Manager (EI), Power Procurement,  
BESCOM Corporate Office, K.R. Circle,  
Bengaluru-560 001.
- 3) Mangalore Electricity Supply Company Limited,  
Superintending Engineer (Commercial),  
4<sup>th</sup> Floor, MESCOM Bhavan, Bejai,  
Kavoor Cross Road,  
Mangaluru-570 004.

- 4) Chamundeshwari Electricity Supply Company Limited,  
Chief Financial Officer,  
# 39, Vijayanagar, 2<sup>nd</sup> Stage,  
Mysuru-570 004.
- 5) Hubli Electricity Supply Company Limited,  
General Manager (Tech), Corporate Office,  
Navanagar P.B. Road,  
Hubballi.
- 6) Gulbarga Electricity Supply Company Limited,  
Chief Engineer (Electy), Corporate Planning,  
Corporate Office, Railway Station Main Road,  
Kalaburagi-585 102.

.... **RESPONDENTS**

[Respondent-1-6 represented by Sri Shahbaaz Hussain, Advocate, Bengaluru.]

### **ORDERS**

- 1) This is a Petition under Section 86 (1) (f) of the Electricity Act, 2003, filed by the petitioner praying for the following reliefs:
  - “(a) To direct the respondents to withdraw the advice of PCKL for recovery of liquidated damages of Rs.29,72,647/- for the month of November 2017;
  - (b) To direct the respondents to refund the amount held back on account of compensation along with interest; and
  - (c) To pass such further orders as the Hon’ble Commission may deem just and proper in the circumstances of the case.

2) The material facts stated by the petitioner in support of its prayers may be stated as follows:

(a) That the petitioner is a Company registered under the Companies Act, 1956 and has engaged in the business of manufacture of cement and also in the business of generation of electricity and trading of electricity. The petitioner is a licensed Inter-state trader under the License No.45/Trading/CERC dated 16.03.2010 issued by the Central Electricity Regulatory Commission (CERC).

(b) The Respondents 2 to 6 are the distribution Licensees in the State of Karnataka. The 1<sup>st</sup> Respondent – Power Company of Karnataka Limited (PCKL) as the representative of Respondents 2 to 6 floated a tender dated 29.08.2017 (Annexure 1) for purchase of 500 MW RTC power for the distribution licensees. The proposed procurement of power was for the period from 20.09.2017 to 31.05.2018.

(c) The petitioner participated in tender proceedings and was one of the successful bidders. The 1<sup>st</sup> Respondent issued Letter of Award (LOA) dated 11.11.2017 (Annexure 2) to the petitioner, the material part of which reads thus:

*"I am directed to communicate the approval on behalf of ESCOMS of Karnataka for procurement of RTC firm power from M/s Shree Cement Limited for the quantum and rate as indicated in the table below:*

<i>Generation Source</i>	<i>Contract period</i>	<i>Contracted Quantum in MW at KPTCL periphery</i>	<i>Rate / Rs/unit at KPTCL periphery</i>
<i>SCL Power plant, Rajasthan.</i>	<i>14.11.2017 to 31.05.2018</i>	<i>100</i>	<i>4.08</i>

*The date of commencement of supply shall be confirmed in the Letter of Acceptance to LOA. However, the supply shall commence within 5 days from the date of issue of LOA."*

The LOA also prescribes other terms and conditions to be fulfilled by the petitioner.

- (d) The petitioner furnished performance guarantee (Annexure-3) vide letter dated 21.11.2017 pursuant to the terms of LOA. Thereafter, the petitioner executed PPA dated 24.11.2017 (Annexure-4) with Respondents 2 to 6, for sale of energy as per the terms and conditions contained in it.
- (e) The petitioner commenced supply of power from 16.11.2017 from its generating unit situated in Rajasthan state. The supply of energy was continued up to 23.30 hours on 18.11.2017.

- (f) In the meantime, the Hon'ble Supreme Court of India vide its order dated 17.11.2017 (Annexure 6) banned the usage of Pet-coke in NCR and in the States of Uttar Pradesh, Rajasthan and Haryana with immediate effect. The petitioner was using Pet-coke as a primary fuel source, for generation of electricity from its generating unit situated in Rajasthan state which was the source of generation from which the power was required to be supplied to Respondents 2 to 6. Because of the order passed by the Hon'ble Supreme Court of India, banning the usage of Pet-coke in the generating unit of the petitioner, it was forced to stop the supply of power to Respondents 2 to 6 from 23.30 hours of 18.11.2017. The same was communicated to 1<sup>st</sup> Respondent by the petitioner as per letter dated 17.11.2017 (Annexure 7). In the same communication it was also made clear that the petitioner would make best effort for arranging of supply of power from alternate source which it would be confirmed in due course of time. The petitioner resumed the supply of power from 16.12.2017, after arranging alternative fuel for its generating unit situated in Rajasthan state.
- (g) The petitioner in his e-mail dated 20.11.2017 and the letter dated 20.11.2017 (Annexure-8) had intimated that it would

supply 100 MW RTC power from 24.11.2017 to 30.11.2017 from alternative source namely; Sembcorp Gayatri Power Limited (SGPL) CTU connected plant, located in Southern Region. Further, it was requested in the said letter to give concurrence for the supply of power from alternate source, so that OA application could be processed accordingly.

- (h) The petitioner sent another communication through e-mail as per Annexure-9 dated 21.11.2017 intimating that it was in a position to arrange supply of power from the alternate source on 22.11.2017 and 23.11.2017 and to give concurrence for the same. The petitioner sent another letter dated on 22.11.2017 (Annexure-10) intimating that the supply from alternate source of SGPL could be arranged from 20.00 hours on 23.11.2017 itself.
- (i) It is stated by the petitioner that in spite of the above communications, the 1<sup>st</sup> Respondent has not given its consent for supply of power from alternate source.
- (j) In spite of the '*Force Majeure*' event and offering of alternate source of power supply, the 1<sup>st</sup> Respondent made a claim for compensation under Article 6.2.5 of the PPA of Rs.60,50,077/- which was later revised to Rs.29,72,647/- alleging to be on

account of the short supply of power by the petitioner for the month of November 2017 vide its bill dated 29.12.2017 (Annexure 5). It is stated by the petitioner that the said claim is illegal and the conjoint reading of Articles 5.1.4 and 6.2.5 of the PPA does not authorize imposition of the compensation, as claimed.

- (k) It is stated by the petitioner that considering the availability of supply of power from alternate source from 22.11.2017 to 30.11.2017 and the actual power scheduled from 16.11.2017 to 23.30 hours of 18.11.2017, the total availability stood at 79.40% of the contracted quantum for the month of November 2017. Therefore, the petitioner contended that the supply of power from the petitioner exceeded from 75% of contracted energy on monthly basis for the approved Open Access and thereby the 1<sup>st</sup> Respondent could not have claimed any compensation under Article 6.2.5 of the PPA. Therefore, the petitioner has prayed for the above reliefs.

- 3) Upon notice, the respondents appeared through counsel. The 1<sup>st</sup> Respondent filed objections on behalf of the respondents. The contentions raised by the respondents may be stated as follows:-

- (a) The floating of the tender dated 29.08.2017 for purchase of 500 MW RTC power on short term basis, the petitioner being one of the successful bidders, issuing of LOA to the petitioner and execution of the PPA between the petitioner and respondents 2 to 6 etc., are not denied. Further, the injection of power from 16.11.2017 to 23.30 hours of 18.11.2017 is also not disputed.
- (b) The 1<sup>st</sup> Respondent does not dispute the receipt of communication dated 17.11.2017 (Annexure 7) intimating that due to Hon'ble Supreme Court of India, order regarding ban on use of Pet-coke, the petitioner would be prevented from supplying of power to respondents from 23.30 hours of 19.11.2017 onwards and that the petitioner would make best efforts for arranging supply of power from alternate source which would be communicated in due course of time. Further, the 1<sup>st</sup> Respondent does not dispute the receipt of communications dated 20.11.2017 (Annexure-8) offering to supply, of the contracted power for the period from 24.11.2017 to 30.11.2017 (Annexure-8) from alternate source and the subsequent receipt of the communication dated 21.11.2017 (Annexure-9) and communication dated 22.11.2017 (Annexure 10).
- (c) The relevant parts of defence taken by the respondents at Para 2 (k), (m), (n), (o), (q) and (r) are as follows:-

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- (i) **Para 2 (k)** - "The petitioner neither was unable to supply power from 19.11.2017 to 21.11.2017 from its original source nor did it propose to supply from alternative source. The petitioner proposed to supply of power from alternative source in its letter/ emails from 22.11.2017 onwards. Hence, the period from 22.11.2017 to 30.11.2017 was not considered for the purpose of liquidated damages as petitioner proposed to supply power from 22.11.2017 onwards and ECSCOMs/PCKL were not willing to offtake power from alternative source in view of low load demand and heavy wind generation. Hence, there was no liability on either side from 22.11.2017 to 30.11.2017 and the Article 6.2.4 and 6.2.5 is not applicable for procurer and seller also."
- (ii) **Para 2 (m)** – "The petitioner has not offered any power from 19.11.2017 to 21.11.2017. Hence, liquidated damages as per the article 6.2.5 is applicable on the petitioner for the said period, which works out to be Rs.29,72,647/- and no liquidated damages have been levied from 22.11.2017 onwards as the Petitioner offered to arrange supply of power from alternate source."
- (iii) **Para 2 (n)** – "The petitioner has contended that the liquidated damages are applicable under Article 6.2.4 only if the monthly

deviation from the supply of contracted supply of energy is above 25% and that in the instant case, assuming the availability of contracted energy from 22.11.2017 to 30.11.2017, the deviation works out to be only 20.6% which does not attract the levy of liquidated damages. The said contention of the petitioner is misleading and false as the same stems from erroneous and unsubstantiated assumption of availability of power from 22.11.2017 to 30.11.2017."

(iv) **Para 2 (o)** – "The assumption of supplying the contracted energy from 22.11.2017 to 30.11.2017 is false and erroneous for the following reasons:

- As per article 5.1.4 of the PPA, **approval of the Procurer is required** for supply of power from the alternative source. The petitioner has admittedly not secured the consent of the Respondent for supply of power from the alternate source. The PPA does not provide for the exclusion of time taken by Respondents in reverting to the proposal of supply of power from the alternate source for the purpose of levy of liquidated damages. It is incumbent upon the petitioner to inform the Respondents about the alternate source of power well in advance so as to process the proposal and time taken in such processing will not exonerate the Petitioner

*from its liability to pay the liquidated damages. Without the consent of the procurer, petitioner cannot claim availability from the different plants. Moreover, petitioner were not provided any agreement/LOA, which validates/authenticates the Petitioner's claim of supply of power from the alternate source.*

- The period of non-supply had been considered for calculation of liquidated damages as the petitioner had shown willingness to supply of power from alternative sources and on the grounds of equity, the period where the petitioner proposed to arrange for an alternate source of power was excluded for the purpose of calculation of liquidated damages. However, the same shall not mean that for the purpose of calculating the deviation, the petitioner supplied contracted energy during the said period where petitioner proposed to supply power from alternate source.*
- The Petitioner has not produced any evidence to demonstrate that it had kept ready the contracted energy to be exclusively supplied to the Respondents from alternate source and that such energy was not sold to any third party.*

- *Mere proposal on a letter head without adequate data and documents such as agreement with the alternate source for supply of energy shall not mean compliance of Article 5.1.4 of the PPA.”*
- (v) **Para 2 (a)** – *“The offer of the alternative source of power would amount to scheduling of the power by the Petitioner to the extent of the alternative source of power offered, if that schedule is not honored by the Respondents, for any reason. In any event, the Respondent has not made use of the contracted capacity / scheduled energy or any part thereof. The petitioner used for sale of such power, being a part of the contracted capacity, to any third party. In that event, the Respondents are not liable to consider such energy as made available to them by the petitioner. The petitioner was permitted to sell the power to a third party. The petitioner has not produced any document to establish that the entire quantum of power from the alternate source was exclusively available to the Respondents. Hence, during the period of 22.11.2017 to 30.11.2017, the contracted energy cannot be considered as available. There is nothing on record to show that, the petitioner had not sold that quantity of power to any third party.”*

- (vi) **Para 2 (r)** – *“The petitioner had not supplied power from 19.11.2017 to 21.11.2017, and considering the period of 16.11.2017 to 21.11.2017, the liquidated damages as per clause 6.2.5 of the PPA was applied and Rs.29,72,647/- have been recovered. The period from 22.11.2017 to 30.11.2017 was not considered for availability, since approval was not given to petitioner for supply of power from alternative source.”*
- (d) The 1<sup>st</sup> Respondent has contended that in response to the communication dated 20.11.2017 (Annexure-8), it sent e-mail dated 20.11.2017 requesting the petitioner to execute PPA and to furnish the document relating to performance guarantee as per the terms of RfP, before considering the proposal for supply of power from alternate source. [The 1<sup>st</sup> Respondent claims that the said e-mail dated 20.11.2017 (Annexure R-1) was produced along with objections, but no such document was found to be produced]. In the rejoinder, the petitioner has not disputed the receipt of such e-mail and on the other hand has stated that the original document relating to performance guarantee and the PPA duly executed by it on 21.11.2017 had been sent to 1<sup>st</sup> respondent.
- (e) For the above reasons, the Respondents prayed for the dismissal of the petition.

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4. The petitioner filed the Rejoinder denying the validity of the contentions taken by the respondents in the statement of objections. Along with the rejoinder, the petitioner has produced three documents marked at Annexure R-1 to Annexure R-3. Annexure R-1 relates to grant of Open Access for the period from 16.11.2017 to 30.11.2017 for scheduling of 100 MW RTC power, disclosing injection entity as SCL Power plant, Rajasthan and drawee entity as BESCO, Karnataka. Annexure R-2 is a document disclosing the acceptance of the terms of LOA and intimating that the supply of power would commence from 16.11.2017. Annexure R-3 is a document for having applied for Open Access for the period from 24.11.2017 to 30.11.2017 from alternate source of SGPL to BESCO.
5. We have heard the representative of the petitioner and the learned counsels for the respondents.
6. From the pleadings and records and the rival submissions raised by the parties and also from the relevant terms of the PPA dated 24.11.2017, the following issues would arise for our consideration:-
- (i) Issue No.1: Whether the petitioner was liable to pay the liquidated damages for failure to supply the contracted capacity as per Article 6.2.5 read with Article 6.2.4.? If so, what should be the quantum of liquidated damages payable by the petitioner to respondents?
- (ii) Issue No.2: What Order?

7. After considering the relevant terms of the PPA dated 24.11.2017 and the submissions of the parties and the pleadings and records, our findings on the above issues are as follows:

8. Issue No.1: Whether the petitioner was liable to pay the liquidated damages for failure to supply the contracted capacity as per Article 6.2.5 read with Article 6.2.4.? If so, what should be the quantum of liquidated damages payable by the petitioner to respondents?

9. The petitioner dis-owns the liability to pay the liquidated damages on the following two grounds:

- (i) That the inability to supply power was due to the passing of the order dated 17.11.2017 (Annexure 6) by the Hon'ble Supreme Court of India banning the usage of Pet-coke in NCR and in the States of UP, Rajasthan and Haryana with immediate effect which amounts to *Force Majeure* event exempting the petitioner from performing its obligation under the PPA;
- (ii) That it offered alternate source of power supply for the period between 22.11.2017 to 30.11.2017 to meet its obligations under the PPA, but the 1<sup>st</sup> Respondent failed to give the concurrence for the same, thereby for this whole period, the petitioner was

deemed to have supplied energy to the extent of contracted quantum.

10. Now, we will consider the first ground urged by the petitioner.

(a) The Articles 7.1 and 7.2 of the PPA provides for 'Force Majeure' and its effect as follows:

**7.1 - " Force Majeure**

*Force Majeure Events shall mean the occurrence of any of the following events:-*

- (i) Any restriction imposed by RLDC/SLDC in scheduling of power due to breakdown of Transmission/Grid constraint shall be treated as Force Majeure without any liability on either side.*
- (ii) Any of the events or circumstances, or combination of events and circumstances such as act of God, exceptionally adverse weather conditions, lightning, flood, cyclone, earthquake, volcanic eruption, fire or landslide or acts of terrorism causing disruption of the system.*
- (iii) The contracted power will be treated as deemed reduced for the period of transmission constraint. The non/part availability of transmission corridor should be certified by the concerned RLDC/SLDC.*
- (iv) The procurer would return the CPG in case of non-availability of transmission corridor during the contract period.*

*The Affected Party shall give intimation to the other Party of any event of Force Majeure immediately but not later than 24 hours."*

**7.2 - "Duty to Mitigate**

*To the extent not prevented by a Force Majeure event, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any event of Force Majeure as soon as practicable."*

(b) The above definition of the phrase 'Force Majeure' would clearly indicate that outage of generating station due to break-down or non-generation of energy for want of fuel for any reason, cannot be treated as 'Force Majeure' event. Therefore, the petitioner cannot claim the defence of 'Force Majeure' for non-supply of Contracted Capacity. Therefore, the 1st ground urged by the petitioner is rejected.

11. Now, we will consider the 2nd ground urged by the petitioner.

a) Though the PPA is executed on 24.11.2017, Article 2.1 states that the effective date of this agreement shall be from 16.11.2017, the date of commencement of the supply of power. The other important clauses of the PPA are that the Seller shall ensure that 100% Contracted Capacity is made available to the Procurers

(Article 4.1.1), that the entire Contracted Capacity shall be for the exclusive benefit of the Procurers (Article 5.1.3.1), the Seller shall raise bills on monthly basis for the energy scheduled at the delivery point (Article 6.1).

- b) Regarding supply of power from alternate source, Article 5.1.4 provides as follows:-

**Article 5.1.4 – “Alternate source of power supply –**

*If the Seller is unable to provide supply of power to the Procurer(s) up to the Contracted Capacity from the Delivery Point except due to a Force Majeure Event, the Seller shall supply power up to the Contracted Capacity from an alternative generation source to meet its obligations under this Agreement with the consent of Procurer(s). Such power shall be supplied to the Procurer(s) at the same Tariff as per the terms of this Agreement. If the power is being supplied through alternate source, additional charges and losses if any, due to cancellation of existing corridor and booking of new corridor etc., shall be to the account of Seller.”*

- c) The petitioner could not supply power from the generation source viz., SCL Power Plant, Rajasthan, as there was ban for using Pet-coke as fuel for the period from 23.30 hours of

18.11.2017 to 16.12.2017 till arranging alternative fuel. Therefore, for the month of November 2017, the petitioner could not supply power from 23.30 hours of 18.11.2017 to 30.11.2017. The petitioner offered alternate source of power supply from 24.11.2017 to 30.11.2017 from SGPL as per the communication dated 20.11.2017 (Annexure-8). He had also applied for grant of Open Access on 20.11.2017 before SRLDC for the period from 24.11.2017 to 30.11.2017 for injecting 100 MW RTC power from SGPL from alternate source as per Annexure R-3. Therefore, the communication dated 20.11.2017 (Annexure-8) and the application for grant of Open Access for the period from 24.11.2017 to 30.11.2017 (Annexure R-3) would clearly indicate that the petitioner offered alternate source of power supply for the said period from 24.11.2017 to 30.11.2017.

- d) In response to the communication dated 20.11.2017 (Annexure-8), the 1<sup>st</sup> Respondent replied vide e-mail dated 20.11.2017 requesting the petitioner to execute the PPA and to furnish performance guarantee as per the terms of the RfP, before considering the proposal for supply of power from the alternate source. Thereafter, on 21.11.2017 at 06.48 p.m. vide communication (Annexure-9), the petitioner informed that it was in a position to arrange power on 22.11.2017 and

23.11.2017 from alternate source and requested the 1<sup>st</sup> Respondent to give its concurrence for the same. The 1<sup>st</sup> Respondent did not give its concurrence in response to Annexure-9. Thereafter, the petitioner again on 22.11.2017 at 04.18 p.m. vide communication (Annexure-10) intimated that it was in a position to arrange power supply from alternate source from 20.00 hours of 23.11.2017 till 24.00 hours of 30.11.2017 and requested to give concurrence of the petitioner, so that the OA application could be processed further. The 1<sup>st</sup> Respondent has not given its concurrence for supply of power from alternate source in reply to any of the above communications of the petitioner. The petitioner himself in his Rejoinder in Para 11 in reply to Para 2 (k) of the objection statement of the 1<sup>st</sup> Respondent has stated that:-

"The process of arranging power from alternative source took some time and power was arranged from 24.11.2017 to 30.11.2017 and subsequently for 22.11.2017 and 23.11.2017 as well."

As already noted the 1<sup>st</sup> Respondent in its e-mail dated 20.11.2017 replied that before considering the giving of consent for supply of power from alternate source, the petitioner should furnish performance guarantee and execute

the PPA. Only thereafter, the petitioner offered to supply the power from alternative source even on 22.11.2017 and 23.11.2017. But the petitioner had not produced any evidence to show that it had applied for Open Access for these two days or it had obtained the consent of alternate source generator. As can be seen from Annexure-9 and Annexure-10, it is not made out by the petitioner from which alternate source it would supply power on 22.11.2017 and 23.11.2017. Therefore, we are of the opinion that the offer of the petitioner to supply power from alternate source for the period from 24.11.2017 to 30.11.2017 can be taken as the valid offer and that the subsequent offer made by the petitioner to supply power even on 22.11.2017 and 23.11.2017 cannot be considered as valid offer.

- e) We have already extracted Article 5.1.4 relating to supply of power from alternative source. It provides that if the Seller is unable to provide supply of power to Procurers up to the Contracted Capacity from the delivery point except due to 'Force Majeure' event, the Seller shall supply power up to the Contracted Capacity from an alternative generation source to meet its obligation under this agreement 'with the consent of the Procurers.' Therefore, the supply of power from alternate

source is possible only in the event of the Procurers concurring for such supply. Admittedly, in the present case, the 1<sup>st</sup> Respondent or any other respondents have not given such concurrence. In the absence of such concurrence, the petitioner is not entitled to supply power from alternative source. The petitioner contended that if it had offered to supply power from alternative source and the 1<sup>st</sup> Respondent had withheld the consent for such supply, the petitioner was deemed to have supplied energy to the extent of Contracted Quantum for this whole period. Such an inference cannot be drawn either from Article 5.1.4 or any other Article of the PPA.

- f) It may be true that allowing the petitioner to supply power from alternative source, only with the consent of 1<sup>st</sup> Respondent as stated in Article 5.1.4 of the PPA is an onerous term of the Contract. The petitioner should have taken proper step before finalizing the bid proceedings to delete such 'term of giving consent' as per Article 5.1.4 of the PPA for supply of power from alternative source. In the absence of it. In the absence of it, the refusal to give consent by the 1<sup>st</sup> Respondent, even though the petitioner was being ready for supply of RTC power to the extent of 100 MW could not be taken as deemed supply of

energy, as claimed by the petitioner. Therefore, we hold the 2nd ground urged by the petitioner is not valid.

12 (a) The relevant portion of the Article 6.2.4 and Article 6.2.5 of the PPA specifying for payment of liquidating damages for failure to supply the Contracted Capacity reads thus:-

**'Article 6.2.4 – Payment for Liquidated Damages for failure to supply the Contracted Capacity:**

- *Both the parties would ensure that actual scheduling does not deviate by more than 25% of the Contracted power as per the approved open access on monthly basis.*
- xxx xxx xxx

**Article 6.2.5 – In case deviation from Seller side is more than 25% of contracted energy for which open access has been allocated on monthly basis, Seller shall pay compensation to Procurer at 20% of Tariff per KWh for the quantum of shortfall in excess of permitted deviation of 25% in the energy supplied and pay for the open access charges to the extent not availed by the Procurer.'**

(b) In the event of not considering the availability of supply of power from alternative source from 22.11.2017 to 30.11.2017,

one can say that the claim made by the 1<sup>st</sup> Respondent as per Annexure 5, towards deduction of Rs.29,72,647/- on account of liquidated damages cannot be found fault with.

- 13) (a) The petitioner contended that 'the availability' of supply of power from alternate source should be considered for the period from 22.11.2017 to 30.11.2017, to find out as to whether there was any deviation from Seller's side is more than 75% of 'Contracted Energy' for which Open Access has been allocated on monthly basis, and for calculating the payment of compensation under Article 6.2.5 of the PPA. We have already noted that the offer of alternate power supply on 22.11.2017 and 23.11.2017 cannot be considered as valid offer for supply of power from alternate source. It can also be noted that the actual energy scheduled and the deemed availability at KPTCL periphery which is the delivery point agreed in the PPA should be taken into consideration. If the actual energy scheduled and the deemed availability of energy is calculated in this manner, it would come to 2,35,32,730 units and 75% of the contracted energy at KPTCL periphery comes to 2,65,83,480 units for the month of November 2017. The difference would be 30,50,750 units. The liquidated damages payable by the petitioner at 20% of the quoted tariff of Rs.4.08 per unit comes to Rs.24,89,412/-. The detailed calculation is as shown in the table below:

Energy actual scheduled & deemed Availability of energy in respect of M/s Shree Cements Limited ( 100 MW Contracted Capacity at Regional periphery					
Sl No	Date	Application No filed by the Company	Energy to be scheduled by Shree Cements Ltd Regional Periphery in MUs	Energy scheduled by Shree Cements at KPTCL Periphery after deducting withdrawal POC losses of Karnataka in MUs	Energy Actual scheduled & deemed Availability of Energy in Mus at KPTCL Periphery
1	16-Nov-17	S26764D	2.4000	2.36136	2.36136
2	17-Nov-17	S26759F	2.4000	2.36136	2.36136
3	18-Nov-17	S26759F	2.4000	2.36136	2.26297
4	19-Nov-17		2.4000	2.36136	0
5	20-Nov-17		2.4000	2.36304	0
6	21-Nov-17		2.4000	2.36304	0
7	22-Nov-17		2.4000	2.36304	0
8	23-Nov-17		2.4000	2.36304	0
9	24-Nov-17		2.4000	2.36304	2.36304
10	25-Nov-17		2.4000	2.36304	2.36304
11	26-Nov-17		2.4000	2.36304	2.36304
12	27-Nov-17		2.4000	2.36448	2.36448
13	28-Nov-17		2.4000	2.36448	2.36448
14	29-Nov-17		2.4000	2.36448	2.36448
15	30-Nov-17		2.4000	2.36448	2.36448
		Total Energy in Mus	36.0000	35.44464	23.53273
		Total Energy in Kwh	36000000	35444640	23532730
		75% of the contracted energy at KPTCL Periphery in Kwh		26583480	
		Actual energy scheduled & deemed availability of Energy in kwh		23532730	
		Difference between 75% of the contracted energy @ KPTCL Periphery and actual energy scheduled & deemed availability in kwh		3050750	
		Liquidated damages payable by Shree cements at 20% of quoted tariff of Rs 4.08/unit (4.08*0.2) in Rs		24 89 412	

- (b) The petitioner is also liable to pay for the Open Access charges to the extent of energy not made available by the procurer, as per the last part of the Article 6.2.5 of the PPA. The ESCOMs have paid the transmission charges to the KPTCL for FY-2018, as per the tariff determined by this Commission. The transmission charges would be determined considering the Annual Revenue Requirement (ARR) and the transmission capacity of the KPTCL. The transmission tariff of KPTCL for FY 2018 was Rs.1,22,889/- per Mega Watt per month. The approved ARR of KPTCL for FY 2018 was Rs.2,753.7 crores and the total energy considered for transmission in KPTCL transmission system was 65,576.04 MUs, as could be ascertained from the tariff order for FY 2017 relating to KPTCL. Therefore, the transmission charge per unit works out to Rs.41.99 paise. As noted above, the shortfall of energy comes to 30,50,750 units. Therefore, the petitioner would be liable to pay Rs.12,81,010/- towards Open Access charges to the extent of power not availed by the procurers.
- (c) Therefore, the total amount of compensation payable by the petitioner would exceed the deduction of Rs.29,72,647/- made by the 1<sup>st</sup> Respondent as per Annexure-5.

(d) In view of the above facts, the Commission is of the considered view that the petitioner is not entitled to any relief, even accepting the contention of the petitioner for assessing the compensation payable under Article 6.2.5 of the PPA.

14. Issue No.2: What Order?

For the foregoing reasons, we pass the following order:

**ORDER**

The petition is dismissed. The petitioner is not entitled to any of the reliefs prayed for.

Sd/-  
(SHAMBHU DAYAL MEENA)  
CHAIRMAN

Sd/-  
(H.M. MANJUNATHA)  
MEMBER

Sd/-  
(M.D. RAVI)  
MEMBER

