

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

O.P. No. 33 of 2012

- In the matter of : Petition filed by M/s Tata Global Beverages Ltd. & M/s Kanan Devan Hills Plantations Co. Pvt. Ltd., Munnar under section 86 (1) (f) of Electricity Act, 2003, read with judgment in WP (C) 139/2010 of Hon'ble High Court of Kerala
- Petitioner : 1. M/s Tata Global Beverages Ltd. (formerly Tata Tea Ltd.)
2. M/s Kanan Devan Hills Plantations Co. Pvt. Ltd., Munnar
- Respondent : Kerala State Electricity Board Ltd.
- PRESENT** : **Shri T.M. Manoharan, Chairman**
Shri P. Parameswaran, Member
Shri Mathew George, Member

INTERIM ORDER DATED 17-03-2014

1. M/s Tata Global Beverages Ltd., Kolkatta (formerly Tata Tea Ltd.) the first petitioner (P1) & M/s Kanan Devan Hills Plantations Co. Pvt. Ltd., Munnar, the second petitioner (P2) filed a petition under Section 86(1) (f) of Electricity Act, 2003, pursuant to the judgment of the Hon'ble High Court of Kerala dated 01.06.2012 in the writ petition W.P. (C) 139/2010.
2. M/s Tata Tea Ltd., who is the predecessor in interest of the first and second petitioners, was engaged in growing and manufacturing of tea in their estates in Kanan Devan Hill Village (KDH Village) in Munnar area. M/s Tata Tea Ltd., was also the distribution licensee in the said area. They had entered into a power purchase agreement (PPA) with Kerala State Electricity Board (KSEB) on

01.01.1990 for the purchase of 4000 kVA of power for their own use and for supply to consumers in and around Munnar. They were purchasing energy at grid tariff. When the grid tariff was revised with effect from October, 2002, it was challenged before the Hon'ble High Court from M/s Tata Tea Ltd., in Writ Petition (C) 15833/2003. The Hon'ble High Court, in its interim order, granted a stay against the revision of grid tariff. Consequently M/s Tata Tea Ltd., continued to pay electricity charges at the pre-revised tariff.

3. With effect from 01.04.2005, the plantations belonging to M/s Tata Tea Ltd., in Munnar area were transferred to Kanan Devan Hills Plantations Company Pvt. Ltd., the second petitioner. The licence for distribution of electricity was also transferred from the first Petitioner to the second Petitioner. M/s Tata Tea Ltd., had entered into PPA with K.S.E.B. on 01.01.1990 with a contract demand of 4000 kVA. The term of PPA expired on 31.12.1994. Based on the request of P1, K.S.E.B. had enhanced power allocation from 4000 kVA to 7000 kVA with effect from 09.09.1999. As per clause 16 (a) of the agreement dated 01.01.1990, a fresh agreement for the whole supply had to be executed for commencing the supply as per any additional power allocation. Supply of electricity to the petitioners was continued even after the expiry of the contract period in the absence of any power purchase agreement between the Petitioners and the Respondent. This was done with a view to avoiding inconvenience and problems to the consumers.
4. As per the terms of the PPA, first Petitioner was eligible for a rebate of 5% for prompt payment. While disposing of the petition for the approval of ARR and ERC for 2005-06 (TP 7 of 2005) the Commission had, on 28.06.2005 directed K.S.E.B., inter-alia, to continue to allow the rebate of 5% on the power purchase cost to first petitioner, provided the bills are paid promptly by the first Petitioner. Since the electricity charges were paid by first petitioner at the pre-revised grid tariff in view of the stay order of the Hon'ble High Court in WP (C) 15833/2003, K.S.E.B. had taken a stand to the effect that the first Petitioner was not eligible for the 5% rebate since they were making payment at pre-revised grid tariff,

since such payment of electricity charges at pre-revised grid tariff cannot be treated as prompt full payment.

5. When K.S.E.B. had approached the Commission through D.P. 14 of 2004 for settlement of disputes between K.S.E.B. and first Petitioner, the Commission in its order dated 22.05.2004 had expressed its inability to interfere in the matter since there was no agreement governing the supply of electricity during the impugned period after 31.12.1994. The Commission had directed the petitioner and the respondents to arrive at an agreement based on mutual discussions.
6. In compliance with the directions of the Commission, series of discussions were held between KSEB and M/s Tata Tea Ltd. Based on such discussions, K.S.E.B. issued B.O. (FB) No.3621/2005 (Plg.Com. No.3545/1998) dated 20.12.2005 by which the decisions in the discussions were approved for implementation. The main decisions as per the Board Order dated 20.12.2005 were as follows;
 - (1) The Contract Demand of M/s Tata Tea Ltd. shall be 7000 kVA from the date of power allocation, i.e. 09.09.1999 and billing has to be regulated with reference to 7000 kVA from 09.09.1999.
 - (2) The combined Maximum Demand shall be assessed by taking the arithmetic sum of the Maximum Demands recorded at Pallivasal and Madupetty, instead of using the formula given in the B.O. dated 07.04.1999 and billing revised accordingly.
 - (3) The Maximum Demand at each feedback points of K.S.E.Board, consumption will be calculated in proportion to the reading at the ToD meter at Vaguvara and based on actual energy consumption from each of the feedback points till installation of ToD meter by M/s Tata Tea at their own cost.
 - (4) 5% rebate in tariff up to September 2002 is permitted as M/s Tata Tea Ltd. has remitted the dues at the then ruling rate.

- (5) 5% rebate already granted from October 2002 to October 2005 is withdrawn.
 - (6) 5% rebate in tariff in future will be allowed from the date of payment of the existing arrears and be continued subject to the condition that M/s Tata Tea Ltd., makes prompt payment of bills raised by the Board at ruling tariff.
 - (7) As a package to settle long pending arrears, interest on old arrears of Rs.40.1 lakh (arrear for the period prior to 01.04.1998) is waived.
 - (8) As a package of one time settlement, interest on past arrears be calculated @ 12% per annum, provided M/s Tata Tea Ltd., clear the arrears in lump. This concession will be withdrawn, if M/s Tata Tea Ltd., do not agree.
 - (9) The Special Officer (Revenue) shall issue revised demand for the arrears adopting the principles mentioned above. M/s Tata Tea Ltd., should be requested to make payment in one lump within 15 days of the revised demand notice.
 - (10) M/s Tata Tea Ltd., will withdraw cases pending in the Courts.
 - (11) M/s Tata Tea Ltd., should pay the bill on the date at ruling tariff to continue to get 5% rebate in future.
 - (12) Decided to incorporate the above mentioned decisions regarding power allocation and past arrears in the new agreement to be executed.
7. In view of the above Board Order dated 20.12.2005, KSEB issued a demand notice to the first petitioner for an amount of Rs.7,60,52,634/- on 03.05.2006 for clearing the arrears of charges payable to KSEB. The first petitioner remitted the amount under protest and withdrew WP (C) 15833/2003. Thereafter the first petitioner filed D.P. No.29/2006 before the Commission praying for allowing 5% rebate on monthly demands, unconditionally. While disposing of the above petition on 14.03.2007, the Commission held that the first petitioner was not

eligible for the rebate during the period in which payment of electricity charges was made at pre-revised grid tariff rate. Aggrieved by this decision, the first petitioner challenged the above order of the Commission dated 14.03.2007, in Appeal no. 121/2008 before the Hon'ble APTEL contending that no consensus was arrived at between KSEB and the first petitioner. The Hon'ble APTEL, while disposing of the above appeal, set aside the impugned order dated 14.03.2007 and remanded the matter to the Commission for fresh disposal. When the matter was considered again by the Commission, KSEB was unable to produce the proof of the minutes of the meeting wherein the consensus was said to have been arrived. The Commission, while disposing of the petition on 12.08.2009, modified the order dated 14.03.2007 in D.P. No. 29/2006 and directed that rebate should be given to the petitioner for the period during which payment of electricity charges was made at the pre-revised grid tariff rate based on the stay order of the Hon'ble High Court of Kerala in W.P.(C) 15833/2003.

8. Consequently KSEB took a stand to the effect that B.O. dated 20.12.2005, was issued on the belief that the decisions in the meetings dated 28.09.2005 and 29.09.2005 were taken on consensus. Since the first petitioner had raised a contention to the effect that the decision was not taken on the consensus, the very basis of B.O. dated 20.12.2005 was lost. The petitioner cannot be allowed to approbate and reprobate at the same time. Therefore KSEB decided to withdraw B.O. dated 20.12.2005 and issued B.O. (CM) No.3048/2009(LA.I/11029/2000) dated 30.11.2009 withdrawing B.O. dated 20.12.2005. The first and second petitioners filed W.P(C) 139 of 2010 before the Hon'ble High Court against the B.O. dated 30.11.2009 and obtained a stay order against the implementation of the said B.O. In the judgment dated 01.06.2012 in W.P(C) 139 of 2010 the Hon'ble High Court directed that “ *the Petitioners are permitted to approach the Commission for obtaining a reasoned order and the interim order dated 16.03.2010 granting the stay shall continue till the Commission issues a reasoned order.*” Accordingly this petition was filed before the Commission on 29.06.2012 which was admitted as O.P. 33/2012. The Commission, in the hearing dated 11.12.2012 had directed KSEB to submit

the details of issues to be adjudicated. On 08.03.2013 KSEB submitted that the main issues related to the supply of electricity to the first petitioner as per agreement dated 01.01.1990. The said PPA expired on 31.12.1994. The supply of electricity is being continued even in the absence of a concluded PPA. Major issues to be resolved related to the contract demand, measurement of billing demand, claims for arrears and claims for interest on arrears.

9. In the submission dated 02.05.2013 the second petitioner submitted that the contract demand had been raised from 4000 kVA to 7000 kVA as per the bills preferred by KSEB. The petitioner had decided to set up a 66KV substation. The petitioners had requested to enhance power allocation to 12000 kVA. In the absence of enhancement of power allocation to 12000 kVA, construction of 66 KV sub-station would be unviable. It was also submitted that the draft PPA forwarded to the petitioners was not acceptable to them since it was based on the Board Orders which were stayed by the Hon'ble High Court.
10. After hearing both the parties on 08.05.2013, the Commission had issued the following interim directions;
 - (i) In view of the fact that dispute is mainly in respect of Clause 5 of the B.O. dated 20.12.2005 (on 5% rebate), the parties may re-examine the issue to work out mutually acceptable solution.
 - (ii) The terms and conditions of the PPA to be executed with KSEB and KDHP have to be negotiated and concluded between them and
 - (iii) The result of the discussion to be intimated to the Commission by 31.07.2013.
11. In the report dated 24.12.2013, KSEB Ltd., submitted that the petitioners and the respondents had discussed the issues on 31.08.2013 in compliance of the directions given by the Commission in the above interim order and that the following decisions were taken;
 - (i) The petitioners shall forward the errors identified in the arrear calculations furnished by KSEB Ltd., on 03.05.2006..

- (ii) KSEB Ltd., will look into the discrepancies pointed out by P1 and P2 for rectification in line with the orders in D.P. 29/2006 dated 14.03.2007 and revert back for reconciliation.
- (iii) The P1 and P2 shall forego the claim for rebate, for the period during which there was no prompt payment by M/s. M/s Tata Tea Ltd.
- (iv) KSEB Ltd., shall forward draft PPA to be entered into with M/s KDHPC Pvt Ltd., for their concurrence.

12. Subsequently, the accounts were perused and the errors pointed by M/s KDHPC Pvt Ltd., were examined. The amount refundable to M/s KDHPC Pvt Ltd., has been assessed at Rs.1,21,99,802/- as against the claim of M/s KDHPC Pvt Ltd., for Rs.1,22,33,645/-. The resultant difference of Rs.33,843/- is due to wrong application of multiplication factor for calculating MD charges during March 2001. This position was concurred by M/s KDHPC Pvt Ltd., since the first petitioner had accepted the condition that the matter of rebate for the period of remittance at pre-revised tariff can be settled as per clause 5 of B.O. dated 20.12.2005, subject to settling of arrear in line with the orders in D.P 29/2007 dated 14.03.2007. KSEB has informed its willingness to reinstate the B.O dated 20.12.2005.

13. KSEB had forwarded draft PPA to M/s KDHPC Pvt Ltd., for their concurrence after which the approval of the Commission would be sought for. KSEB has requested the Commission to condone the delay in submitting the result of the discussion and to accept their willingness to reinstate the B.O dated 20.12.2005.

14. Shri. P.M.Sreekrishnan, Executive Director, M/s KDHPC Pvt. Ltd, Munnar presented the progress of action taken pursuant to the order issued by the Commission on 08.05.2013. It was submitted that M/s KDHPC Pvt Ltd., had held detailed discussion with M/s K.S.E.B.Ltd., on 31.8.2013 arrived at mutual agreement on the issue of rebate on electricity charges at the rate of 5%. It was further informed that K.S.E.B.Ltd., has to pay an amount of Rs. 1,22,33,645/- on account of the excess remittance of demand charges by M/s KDHPC Pvt. Ltd,

and its predecessor in interest. When the contract demand was 4000 kVA as per the power purchase agreement dated 01.01.1990 which expired on 31.12.1994, the first petitioner had remitted demand charges at penal rates as and when the recorded maximum demand had exceeded 4000 kVA. Subsequently KSEB had agreed to increase the contract demand from 4000 kVA to 7000 kVA with retrospective effect from 09-09-1999. Consequently the amount of demand charges paid at penal rates for the recorded maximum demand in excess over 4000 kVA had to be re-assessed treating the permissible contract demand as 7000 kVA and the resultant excess remittance of demand charges was available for netting of the arrears of electricity charges payable by M/s KDHPC Pvt. Ltd and its predecessor in interest. K.S.E.B.Ltd has agreed to net of the amount of such excess of demand charges towards the arrears of electricity charges till such excess demand charge is exhausted. Therefore till that date, M/s KDHPCL and its predecessor in interest should be deemed to have remitted the complete electricity charges in time and therefore M/s KDHPCL is entitled to avail the benefit of 5% rebate till that date. M/s KDHPC Pvt. Ltd has agreed to withdraw their claim for rebate at the rate of 5% with effect from that date.

15. Representing K.S.E.B.Ltd., Shri. B.Pradeep, Executive Engineer submitted that the Commission had, in its order dated 08.05.2013, directed to discuss the issue of rebate at the rate of 5% and to submit the result on or before 31.07.2013. Due to various administrative problems the discussion could be held only on 31.08.2013. K.S.E.B.Ltd. had requested for condonation of delay in submitting the report which was due on 31.07.2013. He informed that the decision in the discussion dated 31.08.2013 was communicated to M/s KDHPC Pvt. Ltd ,who in return informed that they broadly agreed to the minutes subject to certain modifications suggested therein. They also informed that the Board has indicated its willingness to revive the B.O. (FB) No.3621/2005 (Plg.Com. No.3545/1998) dated 20.12.2005, if the decisions in the minutes of the meeting dated 31.08.2013 are agreed to by the petitioners.

16. After hearing both the parties, the Commission expressed the following views;

- (i) The power purchase agreement (PPA) entered into between K.S.E.B. Ltd and M/s KDHPC Pvt. Ltd on 01.01.1990 was valid only up to 31.12.1994.
- (ii) The contract demand as per the above PPA was 4000 kVA.
- (iii) The PPA has not since been renewed or revalidated and therefore the present power purchase is not covered by any agreement though the supply of power is being continued even in the absence of any contractual obligations with the petitioners, in order to avoid hardships to the consumers.
- (iv) The B.O. (FB) No.3621/2005 (Plg.Com. No.3545/1998) dated 20.12.2005 was issued by K.S.E.B. with a view to solving the problems relating to supply of electricity without PPA and consequent claims of M/s KDHPC Pvt. Ltd and its predecessor in interest. In the said B.O. it was stated that the order was being issued based on the consensus arrived at in the meeting dated 28.09.2005 and 29.09.2005. But M/s. KDHPC Pvt. Ltd has disputed that the Board Order was issued based on consensus and thus the denial of consensus by the Petitioners has cut at the very root of the said B.O. dated 20.12.2005. In fact the said B.O. dated 20.12.2005 has become null and void and inoperative on account of this argument put forth by M/s KDHPC Pvt. Ltd and its predecessor in interest. K.S.E.B. had cancelled the above B.O. dated 20.12.2005 as per B.O. (CM) No.3048/2009(LA.I/11029/2000) dated 30.11.2009 which was challenged by M/s KDHPC Pvt. Ltd before the Hon'ble High Court of Kerala. M/s. KDHPC Pvt. Ltd. has not properly explained why they had challenged the cancellation of the Board Order which they themselves had repudiated stating that it was not issued with their consensus.

17. The Commission has issued order dated 14.03.2007 and order dated 12.08.2009 with a view to settling the issues. M/s. KSEB Limited has expressed their willingness to revive B.O. (FB) No.3621/2005 (Plg.Com. No.3545/1998) dated 20.12.2005 in view of the decision in the discussion on 31.08.2013 with M/s KDHPC Pvt. Ltd. Therefore the Commission felt that it would be appropriate to finalise the minutes of the meeting dated 31.08.2013

and 10.02.2014 and the jointly signed minutes be placed before the respective Board of Directors for their approval and issuance of formal orders. Therefore the petitioner and the respondents are directed to finalise the minutes and to obtain approval of such minutes from competent authorities and to issue orders on acceptance and implementation of the decisions in the minutes.

18. The draft PPA shall contain necessary clauses relating to the resolution of issues relating to supply of electricity from 01.01.1995 till the date of signing of the new PPA by both the parties. After initialling the draft PPA by both the parties, the same may be submitted to the Commission for approval.
19. In the meantime, if there are any disputes or cases relating to the above issues in any forum, the same may be amicably settled among the parties. All the follow up actions and formalities shall be completed on or before 31.05.2014.

**Sd/-
P.Parameswaran
Member (E)**

**Sd/-
Mathew George
Member (F)**

**Sd/-
T.M.Manoharan
Chairman**

Approved for issue

Secretary