

# KERALA STATE ELECTRICITY REGULATORY COMMISSION THIRUVANANTHAPURAM

## O.P. No. 2 of 2014

In the Matter of Seeking clarification of certain findings in the Orders of the Kerala State Electricity Regulatory Commission In O.P.30/11 dt.01.11.2013.

**Petitioner** : M/s. Kasaragod Power Corporation Ltd.

**Respondent** : Kerala State Electricity Board Ltd.

**Present** : **Shri T.M. Manoharan, Chairman**  
**Shri P. Parameswaran, Member**  
**Shri Mathew George, Member**

## Order dated 09.04.2014

### Introduction

1. The Commission had issued final orders on 1<sup>st</sup> November 2013 in OP No. 30/2011 filed by M/s KPCL, in the matter of adjudication of disputes between M/s KPCL and KSEB Ltd, arising out of the PPA dt. 12.08.1998. KPCL (the Petitioner) has prepared & submitted to KSEB Ltd. (the Respondent) a detailed claim of the amounts due to them, after netting off the dues to the Respondent. Though detailed discussion on working out the final liability was conducted, since there were fundamental differences in the interpretation of the order, there was no agreement on the exact quantum of the balance amounts under various heads. Even the admitted amounts were not disbursed by the Respondent.
2. Aggrieved with the attitude of the Respondent, the Petitioner has filed a further petition seeking appropriate orders as clarification in certain claims, which was admitted as OP 2/2014 .The copy of the petition was served on M/s KSEB Ltd., and hearings were conducted on 06.03.2014 and 27.03.2014. KSEB Ltd., has, in their letter no. KSEB/TRAC/KSERC/KPCL/2013-14 dated 04.02.2014, requested to approve the settlement of accounts prepared by them in view of the interpretations given by them relating to;
  - (1) The term of Indian Loan availed by M/s KPCL.

- (2) Interest rate applicable to delay in payment in terms of the agreement.
  - (3) Payment of disincentive by M/s KPCL to KSEB Ltd.
  - (4) Reimbursement of the amount of MAT paid by M/s KPCL.
3. M/s KSEB Ltd., as per letter no KSEB/TRAC/KSERC/KPCL/2013-14/1165 dated 05.03.2014, submitted their remarks. Copy of the said remarks was communicated to M/s KPCL. Adv. Deepak Khurana, and Sri. Verghese Jacob represented M/s KPCL on 06.03.2014 and presented their case. As per the request of KSEB Ltd the hearing was posted on 27.03.2014. Adv. Poulose C. Abraham and Sri. P.V.Sivaprasad presented the view of KSEB Ltd. Adv. P. Vikram and Sri. Verghese Jacob submitted their remarks on the views presented by M/s KSEB Ltd. Further, as requested by Adv P. Vikram, further time of one week was granted for submission of notes on arguments. This has been submitted by M/s KPCL on 07.04.2014.
  4. After careful consideration of the facts and arguments presented by the petitioner and the respondent, the Commission gives the following clarifications.
  5. The subject matter relating to the Indian Loan taken by M/s KPCL is dealt with in detail in paragraphs 27 to 33 of the order of the Commission dated 01.11.2013 . As per the terms and conditions of the original PPA, there were components of foreign loan and Indian loan of which the interest rates were 10% and 18.5% respectively. In view of the fact that M/s KPCL had not availed foreign loan, the Commission has ordered to adopt the Indian loan availed by M/s KPCL with the actual weighted average rate of interest of 15.43 % as per the common loan agreement. Since the actual loan amount and actual rate of interest have been ordered to be adopted, the actual tenure of 9.5 years as per the common loan agreement has to be adopted for calculating the dues payable by KSEB Ltd.
  6. The issues relating to payment of interest have been discussed in detail in para 166 of the order of the Commission. The interest rate applicable to delay in payment is governed by the terms of the PPA entered in to between M/s KPCL and KSEB Ltd. The Commission has not given any additional direction relating to payment of interest other than that which has been provided in the PPA. The Contract Rate of Interest has been defined in Article 1 of the PPA. Accordingly the contract rate of interest works out to 17.43 % (the weighted average rate of

interest at 15.43 % as per the common loan agreement plus two percent). The Commission has ordered to pay only simple interest at the rate of 17.43 % per annum. Due date of payment also has been defined in Article 1 of the PPA. The mode of payment has been stipulated in Article 9.4 of the PPA. Accordingly the dues payable shall be worked out as per the terms of PPA at the simple interest rate of 17.43% per annum.

7. The issues relating to payment of disincentive by M/s KPCL to KSEB Ltd. have been discussed in detail in para 80-83 of the order of the Commission. The decision of the Commission in its order dated 01.11.2013 was to the effect that KSEB Ltd. shall not levy disincentive till the payment as per the said order is made to the petitioner. The petition was filed on 17.10.2011 and therefore the claim of the petitioner is with regard to disincentive related to the period ending on 17.10.2011. Since the claim of the petitioner regarding disincentive is only relating to the period ending on 17.10.2011, the disincentive for the period ending on 17.10.2011 shall not be levied, even after making the payment as per the order dated 01.11.2013.
8. The issues relating to reimbursement of the amount of MAT paid by M/s KPCL have been dealt with in detail in para 60 to 64 of the order of the Commission. There is no dispute relating to the fact of payment of MAT or the amount of MAT paid by M/s KPCL. The dispute is only relating to the date of claim preferred by M/s KPCL along with necessary and sufficient documents. It is seen that M/s KPCL had submitted all documents relating to payment of MAT in time soon after the payments were made by them. The delay in finalisation of the assessment order by the Income Tax authorities is not a reason to delay the reimbursement of MAT which has to be governed by Article 9.4 of the PPA. Therefore KSEB Ltd is bound to reimburse the MAT paid by M/s KPCL on the due date defined as per Article 1 of the PPA, (*“Due Date of Payment” means 7 days from the date the designated official of the Board receives a Tariff invoice or supplementary invoice*). In this regard the Commission had, in para 64 of its order dated 01.11.2013 directed as follows;

*Quote:*

*“The MAT paid if any, by the Petitioner shall be reimbursed by the Respondent to the extent that relates to income from generation of electricity.*

*Interest shall be paid by the Respondent to the Petitioner at the contractual rate of interest with effect from the date on which the Petitioner had claimed reimbursement of MAT after its remittance to the IT Department till the date of its reimbursement by the Respondent.”*

*Unquote:*

The above direction stands modified as follows;

*“The MAT paid, if any, by the Petitioner shall be reimbursed by the Respondent to the extent that relates to income from generation of electricity. Interest shall be paid by the Respondent to the Petitioner at the contractual rate of interest with effect from the due date determined (as per the definition of the term “Due Date of Payment” in Article 1 of PPA) based on the date on which the Petitioner had claimed reimbursement of MAT after its remittance to the IT Department till the date of its reimbursement by the Respondent.”*

9. The dues payable shall be assessed and settled in view of the above clarifications on or before 16.05.2014.

Sd/-

**P.Parameswaran  
Member (E)**

Sd/-

**Mathew George  
Member (F)**

Sd/-

**T.M.Manoharan  
Chairman**

**Approved for issue**

**SECRETARY**