



KERALA STATE ELECTRICITY BOARD LIMITED

(Incorporated under the Companies Act, 1956)

CIN: U40100KL2011SGC027424

Regd Office:Vydyuthi Bhavanam Pattom Thiruvananthapuram Kerala 695 004 India

Phone (O) +912514650, 2514278

Email: trac@kseb.in website: www.kseb.in

ABSTRACT

Approval for filing petition before Central Electricity Regulatory Commission (CERC) in light of the Judgment of APTEL dated 13-5-2021 in Appeal No. 230 of 2020 & IA No. 1283 of 2020 - Sanction accorded - Orders issued.

Corporate Office (Commercial & Tariff)

B.O. (FTD)No . 397 /2021(KSEB/TRAC/CG/JPL Case/2021-22

dtd. 26-5-2021

Read: : 1.Appeal No. 230 of 2020 & IA No. 1283 of 2020 filed by KSEB Ltd.

2. Judgment dated 13-5-2021 in Appeal No. 230 of 2020 & IA No. 1283 of 2020

3. e-mail dated 20-5-2021 of Adv.Prabhas Bajaj

4. Note no.KSEB/TRAC/CG/JPL case/2021-22 dtd. 21-5-2021 of the Chief Engineer (Commercial & Planning) (Agenda 64/5/2021).

ORDER

KSEB Limited has entered in to a Power Purchase Agreement with M/s. Jhabua Power Limited on 26.12.2014 for procuring 115 MW RTC power for 25 years. The firm started supplying the power with effect from 22-12-2016. However, the claim of the firm for monthly bills including fixed and fuel charges were not in accordance with the provisions in the PSA in the matter of SHR. Hence KSEBL had not been admitting fully the claim of the firm citing discrepancies in the value of SHR and GCV.

Subsequently, M/s.JPL during discussions held on 31-10-2017 with KSEBL agreed on SHR and GCV to be adopted for computing fixed charges and fuel charges. Based on the said understanding the SHR to be adopted for computation of Fixed Charges and Fuel charges is 2347.90 Kcal/kwh. For PSA2, Jhabua submitted completion certificate specifying net SHR value of 2347.9 kcal/kwh on 4-11-2017. KSEBL decided on 19-12-2017 to take up the matter with KSERC seeking an approval for proceeding with the said understanding. KSEBL requested M/s.JPL to file a petition before KSERC for the same and accordingly, the petition was filed by JPL before KSERC. KSERC observed that two SHRs cannot be adopted for the same unit of the plant and sought Jhabua's confirmation of SHR of 2347.9 kcal/kwh for both fixed and fuel charges.

Subsequent to the proceedings of the petition, M/s. Jhabua Power Ltd. filed a submission before the KSERC for withdrawing the petition citing that as per the Hon'ble Supreme Court judgment dated 11-4-2017, State Commission has no jurisdiction in this matter. Pursuant to this KSERC disposed of the petition filed by Jhabua citing the jurisdiction issue.

Thereafter, M/s. Jhabua Power Ltd. filed a petition before the CERC for adjudication of the issue. In the petition, JPL deviated from the understanding reached and sought for higher SHR for claiming fuel charges and raised dispute in respect of PPA 2 also.

Since the matter involved in the petition has huge financial implication to KSEBL, KSEBL made special engagement by entrusting Adv.Prabhas Bajaj, who had dealt with the cases of KSEBL successfully for conducting the case before CERC during the deliberations.

The CERC vide order dated 25-5-2020 decided in favour of Jhabua Power Ltd and would cause huge additional expenses for KSEBL, which worked out to around Rs.83 Cr as on March 2020 for both the PSAs. Since the PSAs are of 25 years period, the financial burden due to the above CERC order would be huge. Also, since

it has retrospective effect from 1-12-2016 and 1-10-2017, the arrear amount including late payment surcharge for PSAs is also payable.

Therefore, KSEBL decided to file an appeal against the order of CERC. Considering the huge financial adverse impact of the order, KSEBL engaged Adv.Maninder Singh, Sr.Advocate, Supreme Court for dealing this case before APTEL and Adv.Prabhas Bajaj who is well versed with the matter and has dealt with the case before CERC, for assisting the Senior Advocate.

Accordingly, KSEBL filed appeal before Hon'ble APTEL (Appeal No.230 of 2020) and presented the matter in detail. Several hearings were held on the matter. After detailed deliberations, the Hon'ble APTEL issued following orders:

"134. Since there is only one generating unit of 600 MW capacity in the power station, the net SHR for PSA 1 and PSA 2 shall be same as 2465.2 kCal/kWh. Accordingly, the computation of Fixed Charges and Fuel Charges under PSA 1 and PSA 2 shall be on the basis of this Station Heat Rate/ SHR/ net station heat rate of 2465.2 kCal/Kwh.

135. In view of the foregoing we set aside the Impugned Order dated 25th May, 2020 passed by the Central Commission in Petition No. 169/MP/2019. The matter is remitted back to the Central Commission with the direction to consider the matter afresh keeping in view the opinion expressed in this Judgment and issue appropriate orders in accordance with law."

The above order is in favour of KSEB Ltd. and the order of CERC dated 25th May, 2020 passed by the Central Commission in Petition No. 169/MP/2019 has been set aside. Moreover, by fixing the SHR of 2465.2 Kcal/kwh for PSA2 also, (Presently PSA1 of 115MW is billed at SHR OF 2465.2Kcal/kwh and PSA 2 of 100MW is billed at 2347.9 Kcal/Kwh), Jhabua Power Ltd. has to reimburse to KSEB Ltd., the over payment made on account of adopting the SHR of 2347.9Kcal/Kwh. This amount comes to around Rs.50Cr approximately till November 2020.

As per the order of APTEL, the matter is remitted back to the Central Commission with the direction to consider the matter afresh keeping in view the opinion expressed in this Judgment and a direction to CERC to issue appropriate orders in accordance with law. Therefore, a fresh petition has to be filed by KSEB Ltd. before CERC to implement the order of APTEL.

The Chief Engineer(Commercial & Planning) placed the matter before the Full Time Directors and suggested to engage Adv.Prabhas Bajaj for filing petition before CERC and to present the matter before CERC on behalf of KSEBL since the matter was dealt by him, at the memo of fee already approved by KSEBL as submitted below.

1.	Towards Drafting Petitions / Appeals / Special Leave Petitions / Statements of Claim	Rs. 60,000/-
2.	Towards Drafting Counter / Rejoinder / Applications / Affidavits etc.	Rs. 40,000/-
3.	Towards Conference (per hour)	Rs. 15,000/-
5.	Towards Appearance before CERC / APTEL / Delhi High Court / Supreme Court	
	Effective Hearing	Rs. 50,000/-
	Non-Effective Hearing	Rs. 20,000/-
5.	Clerkage	@ 10%
6.	Miscellaneous Expense	On Actual Basis
7.	For cases outside Delhi, the terms shall be agreed separately	

The Chief Engineer (Commercial & Planning) also reported that Adv.Prabhas Bajaj opined that since the case involves substantial stakes for KSEBL as well as for the Generator, it is reasonable to expect that Jhabua Power would file an Appeal against the said judgment before the Hon'ble Supreme Court. In this view of the matter, he has advised that a Caveat be filed before Hon'ble Supreme Court on behalf of KSEBL for ensuring the presence of KSEBL before Hon'ble Supreme Court on the first date of hearing and for opposing grant of any interim order to Jhabua Power.

Having considered the matter in detail, the Full Time Directors in its meeting held on 21-5-2021, resolved to accord sanction to engage Adv.Prabhas Bajaj to file petition before CERC for considering the SHR matter of PSAs of Jhabua Power Ltd. afresh, keeping in view the opinion expressed by APTEL vide the Judgment dated 13-5-2021 in Appeal No. 230 of 2020 & IA No. 1283 of 2020 and deal the matter before CERC at the memo of fee already approved by Board. Further resolved to engage Adv.Prabhas Bajaj to file caveat before the Hon'ble Supreme Court.

Orders are issued accordingly.

By order of the Full Time Directors,
Sd/
Lekha G.
Company Secretary I/C

To

1. The Deputy Secretary (Administration)

Copy to:

Company Secretary/Financial Advisor. / Deputy Chief Engineer (TRAC)/ Commercial
Stock file/Library

Forwarded by order


Asst: Exe.Engineer