

ITEM NO.32

Court 6 (Video Conferencing)

SECTION XII-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**SPECIAL LEAVE PETITION (CIVIL) Diary No(s).432/2021**

(Arising out of impugned final judgment and order dated 15-10-2019 in WP No. 15950/2019 passed by the High Court of Andhra Pradesh at Amravati)

**M/S. WALWHAN RENEWABLE ENERGY LIMITED****Petitioner(s)****VERSUS**

**SOUTHERN POWER DISTRIBUTION COMPANY OF  
 ANDHRA PRADESH LIMITED & ORS.**

**Respondent(s)**

(WITH I.R. and IA No.5799/2021-CONDONATION OF DELAY IN FILING and IA No.5802/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.5805/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

**WITH****Diary No(s). 408/2021 (XII-A)**

(WITH I.R. and IA No.5953/2021-CONDONATION OF DELAY IN FILING and IA No.5956/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.5958/2021-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

**Date : 22-02-2021 These petitions were called on for hearing today.**

**CORAM :**

**HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
 HON'BLE MR. JUSTICE M.R. SHAH**

**For Petitioner(s)** Mr. Shyam Divan, Sr. Adv.  
 Mr. Sajan Poovayya, Sr. Adv.  
 Mr. Venkatesh, Adv.  
 Mr. Nitin Saluja, AOR  
 Ms. Shivani Lohiya Luthra, Adv.  
 Mr. Suhael Buttan, Adv.  
 Mr. Anant Singh, Adv.  
 Mr. Abhishek Nangia, Adv.  
 Mr. Siddharth Joshi, Adv.  
 Mr. Rishub Kapoor, Adv.  
 Mr. Aditya Ajay, Adv.  
 Sasha Maria Paul, Adv.

**For Respondent(s)** Mr. Arjun Krishnan, Adv.  
**R-5** Mr. Sumit Srivastava, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

- 1 While issuing notice on 1 February 2021, this Court had directed that pending the return of the notice on 22 February 2021, the High Court may hear and decide the applications filed by the petitioners for vacating or, as the case may be, modification of the interim orders dated 15 October 2019.
- 2 This Court has been apprised by Mr Shyam Divan and Mr Sajan Poovayya, learned Senior Counsel appearing on behalf of the petitioners in the two companion Special Leave Petitions, that in pursuance of the order of this Court dated 1 February 2021, the proceedings were mentioned before the Single Judge of the High Court of Andhra Pradesh on 3 February 2021. On 4 February 2021, the Single Judge expressed his inability to hear the petitions. Thereafter, the proceedings have not been placed for considering the applications which have been moved by the appellants before any other Bench.
- 3 The submissions have been urged on the merits of the issues which have been raised in the Special Leave Petitions, have been adverted to in the earlier order.
- 4 Mr Shyam Divan submits that an amount of Rs 193 crores is due to the petitioner in Special Leave Petition (Civil) Diary No 432 of 2021, comprising of an amount of Rs 180 crores towards the invoiced amounts till the month of November 2020 and Rs 13 crores for the Late Payment Surcharge<sup>1</sup>. In addition, the LPS on an accrual basis for payments not received till date is computed at Rs 17 crores. It has been submitted that since March 2020, the first respondent has not paid any amount whatsoever to the petitioner. The average monthly payment is in the amount of approximately Rs 8.55 crores depending upon the level of

1 “LPS”

generation/supply of power.

- 5 Similar submissions have been made by Mr Sajan Poovayya in the companion Special Leave Petition. In particular, reliance has been placed on the OM of the Government of India dated 28 June 2019 which, *inter alia*, contains the following stipulations:

“4.0 The Power Purchase Agreements have the provision regarding maintenance of adequate Payment Security Mechanism mainly in the form of Letters of Credit by the Distribution Licensees/ Procurers of Power. A robust Payment Security System requires adequacy and validity of Letter of Credit to cover the payments due on account of drawal power.

5.0 It has been seen that despite the above provisions, the Letters of Credit are not being given and there is huge outstanding on account of unpaid power bills. This makes it difficult for the Generators to pay for the fuel, which has to be pre-paid, to continue the generation. The Generators are also required to pay to the Railways in advance for the rakes. If this situation persists, the Generators will not be able to pay for fuel/transportation leading to shortfall in generation of electricity. There will thus be wide spread load shedding on account of lack of generation. It is essential therefore that all the provisions mentioned above are implemented strictly. NLDC & RLDC are therefore directed as follows:

- i. In accordance with Section 28 (3) (a), the NLDC & RLDC shall despatch power only after it is intimated by the Generating company and /Distribution Companies that a Letter of Credit for the desired quantum of power has been opened and copies made available to the concerned Generating Company.
- ii. The intimation to NLDC and RLDC shall specify the period of supply.
- iii. RLDC shall dispatch electricity only up to the quantity equivalent of value of Letter of Credit.
- iv. The dispatch shall stop once the quantum of electricity under LC is supplied.
- v. The concerned generating company shall be entitled to encash the LC after expiry of grace period, i.e. 45

to 60 days as provided in the PPA.

- vi. In the event power is not dispatched for any reason given above, the Distribution licensee shall continue to pay the Fixed Charge to the Generating Company.

6.0 It shall also be ensured by the Load Despatch Centre that the regulated entity, during the period of regulation, has no access to procure power from the Power Exchanges and they shall not be granted Short Term Open Access (STOA).

7.0 In case scheduling and despatch of power produced by any generator is not done due to non-opening of Letter of Credit by the Distribution licensee, then the Distribution licensee would be liable to pay compensation to the generator as per the terms of Power Purchase Agreement or Power Sale Agreement, as the case may be, the distribution licensee has entered in with the generator."

6 Though notice has been served on the respondents, none has appeared. Faced with the intransigence of the respondents in appearing in response to the notice issued by this court, we are constrained to pass a peremptory order, which we do in the following terms:

- (i) The High Court of Andhra Pradesh is requested to hear and dispose of the applications filed by the petitioners for vacating or, as the case may be, modification of its interim order dated 15 October 2019 on or before 12 March 2021;
- (ii) The *ad interim* order dated 15 October 2019 shall be limited in terms of its tenure until 12 March 2021 by which date a fresh reasoned order may be passed by the Single Judge either confirming, modifying or vacating the interim order in terms of (i) above; and
- (iii) In the event that the respondents continue to remain absent in the course of the present proceedings, this Court will proceed to hear and finally dispose of the Special Leave Petitions on the next date of listing.

- 7 List the Special Leave Petitions on 15 March 2021.
- 8 A copy of this order shall be forwarded by the Registrar (Judicial) of this Court to the Registrar (Judicial) of the High Court of Andhra Pradesh so that necessary administrative directions may be obtained from the learned Chief Justice of the High Court for an administrative order for assignment of the proceedings.

**(SANJAY KUMAR-I)**  
**AR-CUM-PS**

**(SAROJ KUMARI GAUR)**  
**COURT MASTER**