

SATURDAY | 09 NOVEMBER 2024

Case Update



APTEL UPHOLDS JPVL'S ENTITLEMENT TO RESERVE SHUTDOWN COMPENSATION, CITING IEGC PRECEDENCE OVER CONFLICTING STATE GRID CODE



SKV Law Offices successfully represented Jaiprakash Power Ventures Limited (“JPVL”) in a matter before APTEL, Appeal No. 247 of 2023. The case centred around JPVL’s entitlement to compensation for periods in 2020 when the Jaypee Bina Thermal Power Plant was placed under Reserve Shutdown (“RSD”). JPVL’s thermal plant had been shut down due to inadequate power scheduling by Madhya Pradesh Power Management Company Limited (“MPPMCL”), which declined to pay capacity charges as stipulated under the Power Purchase Agreement (“PPA”) for the period from June to October 2020.

CENTRAL LEGAL ISSUE

At issue was whether JPVL had a right to claim capacity charges when its plant was under RSD due to low demand scheduling. JPVL relied on provisions in the Madhya Pradesh Electricity Grid Code 2019 (“MPEGC 2019”) and the Detailed Operating Procedure (“DOP”), which allowed RSD. However, MPERC’s regulations were found to be inconsistent with the Indian Electricity Grid Code (“IEGC”), which allows RSD without necessitating amendments to PPAs. By contrast, MPERC’s regulations mandated PPA amendments/supplementary PPA for RSD claims.

BACKGROUND:

JPVL’s Jaypee Bina Thermal Power Plant, which has a 25-year PPA with MPPMCL, faced periods from June to October 2020 when MPPMCL’s power scheduling fell below the technical minimum required to operate the plant. JPVL had to place its units under Reserve Shutdown to prevent damage to the equipment, thereby claiming capacity charges as per its agreement with MPPMCL.

Due to no supplemental agreement having been signed, MPPMCL refused to pay JPVL’s invoices totalling Rs. 117.24 crore for capacity charges incurred during the RSD period, citing the lack of an amended PPA. Despite multiple communications, MPPMCL delayed and ultimately refused payment, leading JPVL to seek legal recourse before the MPERC. However, the same was summarily dismissed by MPERC as not maintainable.

APTEL FINDINGS

In appeal, APTEL while allowing JPVL’s Appeal, held as follows:

- IEGC should prevail over conflicting state regulations under Sections 79 and 86 of the Electricity Act, 2003. APTEL emphasized the need for consistency in grid standards nationwide and noted that MPERC had already acknowledged this inconsistency in a prior order (October 12, 2022) and amended the MPEGC accordingly.
- APTEL addressed MPPMCL's delayed signing of a supplemental PPA necessary for implementing RSD provisions. Citing Supreme Court precedents, APTEL clarified that MPPMCL could not benefit from its own inaction or delay.
- JPVL was entitled to claim capacity charges during the Reserve Shutdown period. APTEL noted that MPPMCL's failure to dispute the invoices within the 10-day period specified in the PPA rendered the invoices conclusive and payable. APTEL highlighted that the dispute resolution mechanism in the PPA was directory, not mandatory, allowing JPVL to seek relief without delay or further process barriers.

In view of the said findings, APTEL set aside MPERC's Order and quashed the Bill Dispute Notices issued by MPPMCL on 06.10.2020, and 15.10.2020, which questioned JPVL's RSD claims.

APTEL further directed MPPMCL to pay JPVL an amount of INR 117.24 crores for capacity charges due for the period from June to October 2020 plus Late payment Surcharge within three months of the judgment date.

JPVL was represented before APTEL by Mr. Shri Venkatesh, Managing Partner and Mr. Suhael Buttan, Counsel of the SKV Law Offices team.

Link to access the Judgment is [here](#)