

Case Update

MADRAS HIGH COURT DISMISSES TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION'S (TANGEDCO) PLEA AGAINST LATE PAYMENT SURCHARGE CLAIMS



Introduction

On January 29, 2025, the Madras High Court (“Madras HC”) dismissed a writ petition filed by Tamil Nadu Generation and Distribution Corporation Limited (“TANGEDCO”) which sought a Writ of Mandamus against the Ministry of Power and P.F.C Consulting Limited to reject certain invoices uploaded by Welspun Renewables Energy Private Limited and Welspun Solar Tech Private Limited (now amalgamated into Tata Power Renewable Energy Limited) on the *Payment Ratifications and Analysis in Power procurement for bringing Transparency in Invoicing of Generators* (“PRAAPTI”) Portal. The invoices, according to TANGEDCO, had allegedly been tampered and no Late Payment Surcharge (“LPS”) was payable

Background of the Dispute

TANGEDCO entered into long-term Power Purchase Agreements (“PPAs”) with private solar power generators i.e., Welspun Renewables Energy Private Limited and Welspun Solar Tech Private Limited (“Generators”). The PPAs were based on tariff orders issued by the Tamil Nadu Electricity Regulatory Commission (“TNERC”) in 2014 and 2016.

In 2017, TANGEDCO issued a circular regulating payments for energy exported by the Generators when their Capacity Utilisation Factor (“CUF”) exceeded 19%. This circular, which limited payments for excess generation, was challenged before TNERC and subsequently before the Appellate Tribunal for Electricity (“APTEL”). APTEL allowed the appeal filed by the National Solar Energy Federation of India (“NSEFI”) on behalf of its members, including the Generators, directing TANGEDCO to compensate generators at 75% of the agreed tariff for excess energy beyond 19% CUF in accordance with the provisions of the PPAs. The Supreme Court later upheld this decision as the Civil Appeal filed by TANGEDCO was dismissed in March 2023.

Claims and Contentions

Following the Supreme Court's ruling, TANGEDCO paid the principal amount involved in the dispute. In December 2023, Generators raised additional invoices for LPS as TANGEDCO had only paid the principal amount. However, TANGEDCO rejected the LPS claims, arguing that the APTEL order, as upheld by the Supreme Court, did not mandate LPS payments.

The dispute escalated when the Generators, after issuing the LPS invoices, uploaded them in February 2024 on the PRAAPTI Portal in terms of the LPS Rules, 2022. This led to TANGEDCO filing the writ petition.

Arguments Presented Before the Madras HC

TANGEDCO contended that the generators were not entitled to LPS under the APTEL's and Supreme Court's judgment. TANGEDCO, for the first time also contended that the invoices uploaded in the PRAAPTI Portal had been tampered with to manipulate the due date for payment and sought rejection of the disputed invoices by the Ministry of Power and P.F.C Consulting Limited.

On the other hand, the Generators contended that their right to claim LPS not only arises from the PPAs, but also from APTEL and Hon'ble Supreme Court's Judgment in as much as categorical claims of LPS not payable by TANGEDCO was rejected by the Hon'ble Supreme Court. The change in the invoice date was immaterial to the payment obligation and did not affect the substantive details of the claim as the principal amount did not change.

Court's Observations and Ruling

The Madras HC examined the provisions of the PPAs and the prior rulings by APTEL and the Supreme Court. It observed that the Supreme Court had already dismissed TANGEDCO's appeal, which included a challenge to the applicability of LPS. Further the Hon'ble Court also noted that the claim of LPS also stems from the toll provisions of the PPA which entitle the generator to receive LPS upon delayed payments.

Further, the court noted that the change in the invoice date did not constitute tampering, as the principal claim for LPS remained unchanged. Since the issue of LPS liability had been raised and dismissed before the Supreme Court, TANGEDCO could not reopen the same issue in the writ petition before it.

Accordingly, the court dismissed the writ petition, directing TANGEDCO to make the LPS payments as per the invoices raised by the Generators within a period of two weeks from the date of Judgment. The Madras HC's ruling fortifies the binding nature of Supreme Court decisions and the contractual obligations under the PPAs.

The ruling reaffirms the legal principles governing payment obligations in the power sector, particularly concerning excess energy supply beyond CUF limits.

Welspun Renewables Energy Private Limited and Welspun Solar Tech Private Limited (now amalgamated into Tata Power Renewable Energy Limited) were represented before the Madras High Court by Mr. CS Vaidyanathan Sr. Adv. , Mr. Satish Parasaran Sr. Adv. Assisted by Shri Venkatesh, Managing Partner; Suhael Buttan, Counsel; Vineet Kumar, Senior Associate and Nikunj Bhatnagar, Associate of the SKV Law Offices Team and Mr. Abhinav Parthasarthy Adv.

Click [here](#) to read the full order of the Madras High Court.