

CASE UPDATE

APTEL Rules in Favour of Reliance Infra's BKPL on Implied Continuation of PPA & Quantum Meruit



In a major win for the power generator, the Appellate Tribunal for Electricity (**APTEL**) on 09.09.2025 ruled in favour of BSES Kerala Power Limited (**BKPL**). The Tribunal applied the principles of implied contract, legitimate expectation, and promissory estoppel in BKPL's favour, and also emphasized the duty of the State Regulator (**KSERC**) to exercise its adjudicatory powers under Section 86(1)(f) of the Electricity Act while adjudicating upon a dispute and not merely dismiss the petition on mere technicalities. APTEL allowed BKPL's appeal against KSERC's order dated 05.10.2018, while dismissing the cross-appeal filed by Kerala State Electricity Board Limited (**KSEBL**).

Background

APTEL set aside KSERC's order to the extent it denied BKPL claims for fixed charges from 01.12.2015 to 31.10.2017, holding that the Power Purchase Agreement (**PPA**) dated 03.05.1999 stood validly extended for two years beyond its original term. The Tribunal further observed that since it was at the instance of KSEBL, that BKPL had kept its plant ready and operational and admittedly had supplied power during the extended period. There is a implied contract existed between the parties. Therefore, BKPL is entitled for recovery of annual fixed charges from 01.11.2015 to 31.10.2017 (O&M, loWC, RoE), and reimbursements of land lease, and tax amounting to INR. 157.34 Crores. The Tribunal relied on a "consistent course of conduct," identifying that in-principle approvals given by Government of Kerala (GoK) and KSEBL for extension of PPA even post the expiry of PPA, and KSEBL's ongoing negotiations and more importantly a joint initiated PPA submitted before KSERC by both the parties i.e., KSEBL and BKPL created a legitimate expectation in favour of BKPL, that PPA shall be extended for two more years. APTEL held that it is at the instance of KSEBL that BKPL has filed a petition under Section 86 (1) (b) of the Electricity Act seeking extension of PPA, KSEBL cannot now back out of that promise. The Tribunal applied the doctrine of promissory estoppel to stop KSEBL from going back on its word and directed KSEBL to pay the fixed charges for the extended two years.

On the issue of Variable Charge, for supply of power during extended period, APTEL held that KSERC erred by compensating BKPL at IEX average RTC prices instead of granting a cost-reflective tariff under Section 61 of the Electricity Act. Since BKPL had procured and stored Naphtha on KSEBL's instructions, its actual fuel cost ought to have been allowed. APTEL held that adopting the average RTC price of IEX was unjustified, as it did not cover BKPL's fixed and variable costs. Since KSEBL both enjoyed the standby availability of the plant and consumed its

electricity, it was bound under Section 70 of the Contract Act (quantum meruit) to pay a reasonable price. APTEL concluded that the IEX price could not be treated as reasonable, given BKPL's heavy capital investment in Naphtha, O&M expenses, and supply of power and held that BKPL is entitled for variable charge at the terms of PPA i.e. landed cost of fuel.

KSERC denied the extension of PPA on the narrow ground that no agreement or consensus ad idem was reached between the parties. Therefore, in the absence of any concluded contract, KSERC cannot adjudicate upon the points of difference between the parties. APTEL rejected the above reasoning of KSERC, while holding that under (Section 9, of the Indian Contract Act) recognizes implied contracts, where offer and acceptance are shown by conduct rather than words. The Tribunal observed that KSEBL's in-principle approvals and representations created a legitimate expectation and that BKPL's reliance, including fuel stocking and maintaining plant capacity, was reasonable and induced by KSEBL's conduct.

Accordingly, APTEL directed KSEBL to pay BKPL fixed charges, lease rent, income tax, and other reimbursements for the extended term, along with energy charges for power supplied between 25.05.2017 and 24.06.2017. Fixed costs, lease rent, income tax, and other charges for the entire extended period (01.11.2015-31.10.2017); Payments are to be made as per the PPA, with carrying cost at the Late Payment Surcharge rate or the applicable contractual rate, subject to a prudence check by KSERC. The Tribunal rejected KSERC's approach of awarding compensation based on Indian Energy Exchange (IEX) rates, holding that BKPL was entitled to a cost-reflective tariff since the fuel was procured on KSEBL's instructions. APTEL criticised KSERC for failing to exercise its adjudicatory powers under Section 86(1)(f) of the Electricity Act and for dismissing the matter on technicalities despite explicit directions from the Kerala High Court.

Appeal No. 240 of 2019 (KSEBL's Cross-Appeal)

APTEL specifically dismissed the cross-appeal by KSEBL, finding no substance once the impugned order was set aside in BKPL's favour.

Click [here](#) to read the judgment.

BSES Kerala Power Limited was represented before APTEL by Shri Venkatesh, Founding Partner, Suhael Buttan, Partner, Vedant Choudhary, Associate & Manav Bhatia, Associate of the SKV Law Offices team.