



ASSAM ELECTRICITY REGULATORY COMMISSION

ORDER SHEET

FILE NO. AERC.342/2010/Pt-II

PETITION NO: 04/2010

CORAM: HON'BLE SHRI S.C. DAS, CHAIRPERSON
HON'BLE SHRI DIPAK CHAKRAVARTY, MEMBER

In the matter of

Petition No. 04 of 2010 filed by M/s Eastern India Powertech Limited in the matter of commercial disputes and Non Payment of contractually due payments by ASEB/APDCL to EIPL.

In the matter of

M/s Eastern India Powertech Limited (EIPL) ----Petitioner
Assam Power Distribution Company Ltd. (APDCL) ----Respondent

Present:

Petitioner: Mr. Debojit Senpati, Advocate, EIPL
Ms Sravana Katakey, Advocate, EIPL

Respondent: Mr. Abhijit Roy, Advocate, APDCL
Mr. Ramen Choudhury, DGM (TRC), APDCL
Mr. P Dekaraj, AGM (TRC), APDCL
Mr. N Deb, AM (F&A), APDCL

ORDER

Dated 21.09.2018

1. The Commission heard both the parties during the Hearing dated 28.08.2018 and 21.09.2018.
2. The Petition 4 of 2010 was filed by the Petitioner in the year 2010. Thereafter, matter was heard by the Commission and vide Order dated 04.05.2017, the Commission decided to adjudicate upon the matter.
Accordingly, certain data & documents were sought from the parties. However, till today complete set of data & documents were not submitted by the parties.
3. In the meanwhile, the Petitioner has drawn attention of the Commission to the Hon'ble Supreme Court Judgment dated 12.04.2018 in the matter of Civil Appeal No.14697 of 2015. In the said Judgment, the Hon'ble Supreme Court opined that, it is mandatory to have Member with experience in practice of Law as opined by the Hon'ble Supreme Court, for taking up Adjudication cases. Therefore, the Petitioner requested that, to avoid further complication in the matter, the Petition may perhaps be referred to an Arbitrator as there is no Member with Judicial experience etc.
4. The Commission after scrutiny of the submissions made and considering the recent developments have decided the following:
 - a. Presently the Commission is having only two members and there is no Member with experience in the practice of Law as opined by the Hon'ble Supreme Court.

Therefore, for speedy disposal of the matter and considering the opinion of the Hon'ble Supreme Court, the Commission deems it fit to refer the matter to Arbitrator.

Accordingly, the Commission decided to refer the matter to a sole Arbitrator, as per the Regulation 24 (3) & 25 (1) of the AERC (Conduct of Business) Regulations, 2004 and subsequent Amendments thereof, read with Section 86 (1)(f) of the EA'2003.

- b. **After due consultation with the parties, the Commission decided to appoint Shri Justice (Retd) D N Biswas, Former Judge of Hon'ble Gauahati High Court, as the Sole Arbitrator for the matter**, subject to consent from him under Section 12 of the Arbitration and Conciliation Act, 1996 and subsequent Amendments thereof.
- c. The cost of Arbitration Proceedings will be borne by the parties as per the Section 31 A and other relevant Sections of the Arbitration and Conciliation Act, 1996 and subsequent Amendments thereof.
- d. The Terms of Reference will be issued by the Commission, after receipt of the consent from Shri Justice (Retd) D N Biswas, Former Judge of Hon'ble Gauahati High Court .

With the above Orders, the Secretary, AERC is hereby directed to get consent from Shri Justice (Retd) D N Biswas, Former Judge of Hon'ble Gauahati High Court. The matter may be placed for final Order, after obtaining consent.

Sd/-
(S.C.Das)
Chairperson, AERC

Sd/-
(Dipak Chakravarty)
Member, AERC