

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 253/MP/2012

Sub: Petition under Section 79 of the Electricity Act, 2003 pertaining to adjudication of issues relating to Power Purchase Agreement between PTC India Limited and Lanco Budhil Hydro Power private Limited.

Date of hearing : 20.12.2012

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S. Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : PTC India Limited, New Delhi

Respondents : Lanco Budhil Hydro Power Pvt. Ltd., Gurgaon
Haryana Power Purchase Centre, Panchkula

Parties present : Shri Ravi Prakash, Advocate, PTC
Shri Varun Pathank, Advocate, PTC
Shri Aditya Dewan, Advocate, PTC
Shri Akhil Sibbal, Advocate, Advocate Lanco
Shri Deepak Khurana, Advocate Lanco
Shri Saleem Inamdar, Advocate, Lanco
Shri Prabhat , Lanco

Record of Proceedings

Learned counsel of the petitioner submitted that the first respondent, Lanco Budhil Hydro Power Private Limited has terminated the PPA dated 30.3.2005 vide its letter dated 18.12.2009 for supply of electricity to the petitioner which in turn has to be supplied to the second respondent, Haryana Power Purchase Centre on the basis of a back to back Power Supply Agreement. The second respondent had filed a petition before Haryana Electricity Regulatory Commission (HERC) on 4.4.2011 challenging the termination of the PPA in which the petitioner appeared and made its submissions. Learned counsel further submitted that while HERC vide its order dated 4.4.2011

affirmed its jurisdiction to adjudicate the dispute, Appellate Tribunal for Electricity (Appellate Tribunal) in its judgment dated 9.8.2011 decided that the HERC did not have the jurisdiction to go into the present dispute. Learned counsel submitted that the petitioner has filed an appeal before the Supreme Court against the judgment of the Appellate Tribunal.

2. Learned counsel for the petitioner submitted that Hon`ble Supreme Court in the Constitution Bench Judgment in *PTC India Limited Vs. CERC [(2010) 4 SCC 603]* has held that the Electricity Act, 2003 (the Act) is an exhaustive code on all matters concerning electricity and Regulatory Commissions have a mandate to monitor trading transactions continuously and ensure that the traders do not indulge in profiteering in case of market failure. Therefore any dispute involving an electricity trader has to be adjudicated by the Regulatory Commissions only. Learned counsel submitted that since the Appellate Tribunal has held that HERC does not have the jurisdiction to adjudicate the dispute, the petitioner as an inter-State trader has approached the Central Commission invoking its power of regulation of inter-State transmission of electricity under Regulation 79(1)(c) of the Act and power of adjudication under section 79 (1) (f) of the Act.

3. The Commission enquired from the learned counsel for the petitioner whether transmission of electricity from a generating company to an electricity trader or distribution licensee through inter-State transmission system would render a dispute between a generating company and a trader to be treated as a dispute involving inter-State transmission for electricity. Ld counsel referred to the BPTA between the petitioner and PGCIL and submitted that injecting entity has been shown as the first respondent's generating company and drawee entity has been shown as the Haryana Utilities in the BPTA. Since the termination of the PPA has rendered the BPTA unimplementable, the present dispute involves inter-State transmission of electricity. Learned counsel submitted that the present dispute is squarely covered under the order of the Commission dated 27.2.2008 in Petition No. 107/2007 where the Commission decided the dispute between UPPCL and MPPTCL as it involved inter-State transmission of power from two hydro generating stations in Uttar Pradesh to Madhya Pradesh. The said order has been upheld by the Appellate Tribunal.

4. Learned counsel for Respondent No.1 submitted that since the petitioner has filed an appeal before the Hon`ble Supreme Court challenging the judgment of the Appellate Tribunal, it cannot approach the Central Commission for the same dispute. Learned counsel submitted that the petitioner has to choose one forum for the same issue at particular point of time and cannot be allowed to indulge in forum shopping which is nothing but abuse of the process of law. Learned counsel requested the Commission to direct the petitioner to file copy of the appeal filed before Hon`ble Supreme Court so that the Commission can take a view whether the present petition is maintainable. Learned counsel for the petitioner submitted that the present petition has been filed to address the issue of limitation since no money claim can be filed after a period of three years. He further submitted that he would file a copy of the SLP.

5. The Commission directed the petitioner to file the copy of the SLP after serving a copy of the same on the respondents by 10.1.2013. The Commission directed the petitioner and the Respondent No.1 to file written submission on the question of maintainability of the petition by 20.1.2013. The matter shall be listed for hearing on maintainability on 29.1.2013

By Order of the Commission

Sd/-

**(T. Rout)
Joint Chief (Law)**