

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 106/MP/2015**

- Subject : Petition under Section 79 (1) (c) and (f) and other applicable provision of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in the inter-State transmission and related matters) Regulations, 2009 against the action of the respondent in threatening to cancel the open access and encashment of bank guarantee.
- Date of hearing : 18.6.2015
- Coram : Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member
- Petitioner : NSL Nagapatnam Infrastructure Private Limited
- Respondents : Power Grid Corporation of India Limited (CTU)
- Parties present : Shri Anand K Ganesan, Advocate, NSL  
Shri T.N. Pathak, NSL  
Shri B.S. Rao, NSL  
Shri Sitish Mukherjee, Advocate, PGCIL  
Shri Gautam Chawla, Advocate, PGCIL  
Shri Akansha Tyagi, Advocate, PGCIL  
Shri Dilip Rozekar, PGCIL  
Ms. Jyoti Prasad, PGCIL

**Record of Proceedings**

Learned counsel for the petitioner submitted as under:

(a) The present petition has been filed seeking direction to CTU not to encash the bank guarantee of ₹1.24 crore furnished by the petitioner as security in favour of the CTU.

(b) CTU's contention that the bank guarantee is in the nature of liquidated damages to be appropriated by it, is misconceived. The bank guarantee has not been provided as a measure of liquidated damages. It is only a security provided to compensate for any loss or damages caused to CTU.

(c) CTU has neither claimed any loss nor has been able to quantify, prove or establish any loss for which compensation is payable. Unless and until CTU is in a position to prove any loss suffered, it is not entitled to the amount of bank guarantee as liquidated damages.

(d) The petitioner has invested more than Rs. 150 crore in the project and it could not sign the LTA due to the non-grant of distance exemption wrt to river Cauvery and consequently, non-grant of CRZ and Consent for Establishment (CFE) clearance.

(e) CTU after appreciating the force majeure events had granted extension from time to time for execution of the LTA.

(f) The cost of system studies undertaken by the respondent have been independently compensated by the petitioner and it is not the case that the bank guarantee is required for compensating the expenditure incurred in system studies.

(g) The reliance placed by CTU on the decision of the Appellate Tribunal for Electricity judgment in Jayaswal Neco Urja Limited Vs Power Grid Corporation of India Limited (Appeal no. 197 of 2014) is misplaced. The question involved in the present petition of whether the CTU is entitled to appropriate the amount of bank guarantee in the absence of any proof of loss or damages suffered was never in issue before ATE.

(h) The Learned counsel for the petitioner relied upon the judgment of Hon'ble High Court of Delhi in Jainsons Clothing Corporation Vs The State trading Corporation of India Limited (F.A.C (O.S.) No. 97 of 1986) and Madras High Court judgment in Adithyaa Vs Food Corporation of India (2014 (1) MWN (Civil) 113) and submitted that onus of proof of loss has to be justified and bank guarantee can be invoked only for the loss sustained.

2. Learned counsel for the CTU submitted as under:

(a) On 17.8.2011, CTU granted LTA to the petitioner. The petitioner has failed to execute the LTA despite issue of several reminders and grant of additional time for execution of LTA.

(b) The petitioner is seeking an *ad infinitum* extension on an untenable ground of force majeure as there is no underlying contract or clause which provides for a defined meaning of force majeure and in the absence of a contract, the plea of force majeure events cannot be sustained.

(c) The Commission in the 'Statement of Objects and Reasons' of the Connectivity Regulations has observed that in order to ensure seriousness on the part of LTA applicants, the bank guarantee is required to be given along with

the application. In case of system augmentation further bank guarantee is required.

(d) As per Regulation 15 of the Connectivity Regulations read with para 23.5 (iii) of the Detailed Procedure made thereunder, the petitioner is required to sign the LTA within 30 days from the grant of LTA, failing which the CTU had the option to encash the bank guarantee furnished by it. CTU had granted extension from time to time. However, even after lapse of 4 years, the petitioner has failed to sign the LTA. In such circumstances, it is justified to cancel the petitioner's LTA and CTU has a right to encash the bank guarantee.

3. After hearing the learned counsels for the petitioner and the respondent, the Commission directed CTU to submit the following information and clarification, on affidavit, by 10.7.2015 with an advance copy to the petitioner:

(a) Date from which LTA would be effective.

(b) CTU vide letter dated 10.12.2010 has indicated date of commencement LTA from 2014 with approved LTA of 800 MW. However, CTU vide its letter 17.8.2011 has indicated approved LTA of 1240 MW with effective date July 2015. CTU may clarify as to whether the petitioner had submitted fresh application modifying the LTA applied?

(c) Reasons for grant of extension from time to time to sign LTA Agreement.

(d) Details of withdrawal/cancellation of the LTA granted on similar grounds. Whether notice has been issued to other generators?

(e) Status of transmission system when the petitioner informed CTU regarding Force Majeure events?

(f) Current status of the Transmission System?

(g) CTU may clarify as to whether it has coordinated the development of associated transmission system with the commissioning of generation project.

4. The Commission directed that due date of filing the information and clarification should be strictly complied with. The information and clarification filed after due date shall not be considered.

5. Subject to above, the Commission reserved the order in the petition.

By order of the Commission

Sd/-  
(T. Rout)  
Chief (Law)