

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 136/MP/2014

- Subject : Petition under section 79 (1) (c)& (f) of the Electricity Act, 2003 and Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009.
- Date of hearing : 12.5.2015
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
- Petitioner : Power Grid Corporation of India Limited
- Respondents : Corporate Power Limited
National Load Despatch Centre
- Parties present : Shri S.B. Upadhyay, Senior Advocate, PGCIL
Ms. Suparna Srivastava, Advocate, PGCIL
Shri V. Srinivas, PGCIL
Shri A.M. Pavgi, PGCIL
Shri R.P. Padhi, PGCIL
Shri Aryaman Saxena, PGCIL
Ms. Meghana Aggarwal, Advocate, CPL
Shri Hemant Singh, Advocate, CPL
Ms. Supriya Singh, Advocate, NRLDC
Ms. Abilia Zaidi, NLDC

Record of Proceedings

Learned senior counsel for the petitioner, PGCIL submitted as under

- (a) As per the conditions specified in the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (Connectivity Regulations), upon signing of MTOA agreement and the TSA, the Respondent, Corporate Power Ltd. (CPL) was granted medium term open access in the transmission system of the petitioner for evacuation of 150 MW power from its power plant in the State of Jharkhand.

(b) CPL signed the MTOA agreement and the TSA. However, did not open the required Letter of Credit and instead requested to transmit power from an alternate source for which the corridor granted under the MTOA was required to be transferred. The petitioner vide its letter date 9.5.2013 refused the said request as it was in violation of the provisions of the Connectivity Regulations.

(c) On the issue of transmitting power from an alternate source under the existing MTOA, CPL filed appeal before the Hon'ble Appellate Tribunal for Electricity (APTEL) for utilization of the existing MTOA for supplying power from alternate source and also a restraint order against the petitioner from cancelling the said MTOA. The CPL had undertaken in the form of affidavit before the APTEL, to take necessary steps for payment of transmission charges under the MTOA. The status as regards cancellation of the MTOA was granted in favour of CPL by ATPTL vide order dated 25.11.2013.

(d) Despite the above undertaking and extension of time from the APTEL for complying with the undertaking, CPL again failed and refused to open the required Letter of Credit in favour of the petitioner. CPL had no intentions of paying the transmission charges under the MTOA, it was deliberately and willfully abusing the process of the APTEL by filing false undertakings.

(e) APTEL vide its order dated 11.4.2014 accused CPL for misleading the tribunal by first seeking leave to file undertaking in the form of affidavit, and then failing to comply with the same.

(f) The CPL refused to pay transmission charges to the petitioner for the period the MTOA subsisted in its favour.

(g) The CPL is now seeking to take shelter behind the winding up proceedings that have been initiated against CPL in the Hon'ble Calcutta High Court, for non-payment of dues to its various other creditors.

(h) The Hon'ble Calcutta High Court vide its order dated 3.3.2015, stayed the winding up proceedings in which the Official Liquidator was appointed, provided the company (CPL) fully clears the dues of the creditors till 16.4.2015. However, CPL has failed to inform the Commission whether the said payments have been made by them or not.

(i) Since CPL has violated the provisions of the Connectivity Regulations, under which an absolute liability to pay transmission charges has been imposed on an MTOA customers, CPL is liable to pay an aggregate sum of ₹ 18.89 crore under the MTOA granted to it by the petitioner.

(j) The persistent non-payment of transmission charges by open access customers including CPL, has been taken note by the Commission in its order dated 3.2.2014 in Petition No. 78/MP/2013.

(k) Learned senior counsel relied upon the Hon'ble Supreme Court judgment in Allahabad Bank V Canara Bank & Anr. [(2000) 4 SCC 406] and submitted that the ongoing winding up proceedings does not affect the present proceedings before the Commission as the latter are proceedings under a Special Act and as such, override the proceedings initiated under General Act.

2. In response to the Commission's query regarding clearance of the dues, learned counsel for CPL submitted that since the assets are under the control of Official Liquidator appointed by Hon'ble Calcutta High Court, the possession of all assets and properties are now in liquidation and not under the company's control. Therefore, the petitioner has to now recover it from the asset under the possession of the Official Liquidator. He further submitted that he had no instructions as to whether the payments were made by the company by 16.4.2015 or not.

3. The Commission directed CPL to place on record the present position of the liquidation process of the company under the directions of Hon'ble High Court of Calcutta.

4. The Commission reserved the order on the admissibility of the petition.

By order of the Commission

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