

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 188/MP/2015
with I.A. No. 22/2015**

- Subject : Petition under Section 79 (1) (f) & (c) and other applicable provisions of the Electricity Act, 2003, read with regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, against the arbitrary acts and omissions of respondent inter-alia towards threatening encashment of bank guarantee furnished by petitioner under the terms of Agreement for Long Term Access with System Strengthening (Agreement) dated 14.3.2012, executed between the parties herein.
- Date of hearing : 18.8.2015
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : Sarda Energy and Minerals Limited
- Respondent : Power Grid Corporation of India Limited
- Parties present : Shri J.K.Chaudhary, Advocate for the petitioner
Shri Akansha Tyagi, Advocate, PGCIL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed restraining the respondent from invoking the Bank Guarantee (BG). Learned counsel for the petitioner further submitted as under:

- (a) The petitioner is in the process of setting up 350 MW thermal power plant in the State of Chhattisgarh. On 14.3.2012, the petitioner entered into a Long Term Open Access Agreement (LTAA) with PGCIL for Long Term Access facilitating inter-State transmission of electricity and furnished construction BG of ₹ 7.8 crore

(c) The petitioner was allotted 125.77 hectare of land for setting the project which has been identified as coal bearing area by Ministry of Coal and allotted to NTPC for exploration of coal and petitioner deprived to use the project land for the purpose of setting up of the power plant. Due to such act of Govt. towards identifying the project land as coal bearing area and allotting the same to NTPC, have rendered the agreement dated 14.3.2012 frustrated and impossible for being performed.

(d) The petitioner vide its letter dated 6.7.2015 informed PGCIL that he is not able to establish the proposed project due to reasons beyond its control and requested PGCIL to consider the agreement dated 14.3.2012 as void and absolve the petitioner of its obligation without initiating any penal action. However, the PGCIL is threatening for invoking the bank guarantee.

(e) Learned counsel for the petitioner requested the Commission to restrain PGCIL from invoking bank guarantee furnished under the agreement dated 14.3.2012 which has been frustrated.

2. Learned counsel for PGCIL objected to the pleadings made by the petitioner and submitted as under:

(a) It is settled principle of law that restrain on encashment of unconditional bank guarantee be granted only in two exceptional cases i.e. (i) fraud or (ii) irretrievable injury. In the present case, the petitioner has not alleged fraud. However, with respect to irretrievable injury, the petitioner upon encashment of the bank guarantee will not suffer irreparable harm as it can be quantified and compensated, if the Commission decides the present petition in favor of the petitioner.

(b) The frustration is a mixed question of law and fact, and at this stage the Commission is to see whether any case of irretrievable injustice has been made out by the petitioner. Therefore, existence of frustration cannot be considered for deciding as to whether the petitioner was entitled to the stay of invocation of bank guarantee.

(c) Invocation of bank guarantee would not amount to unjust enrichment of PGCIL as in light of the Detailed Procedure made under Connectivity Regulations, the damages collected from the petitioner shall be adjusted for the purpose of claiming transmission charges from the balance (remaining) developers.

3. After hearing the learned counsels for the parties, the Commission directed the petitioner and the respondent to file their written submissions by 10.9.2015 with copy to

each other. The Commission directed that due date of filing the written submissions shall be complied with and no further extension on that account shall be granted.

4. Subject to the above, the Commission reserved the order in the petition and the I.A.

By order of the Commission

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