

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 203/MP/2015

Subject : Petition under Section 86 (1) (c) and (f) of the Electricity Act, 2003 for adjudication of dispute between GMR Kamalanga Energy Limited and Power grid Corporation of India Limited in relation to illegal threat of encashment of the bank guarantee furnished in relation to the long term open access granted to the petitioner.

Date of hearing : 3.9.2015

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Petitioner : GMR Kamalanga Energy Limited

Respondent : Power Grid Corporation of India Limited

Parties present : Shri Sanjey Sen, Senior Advocate, GMR
Shri Alok Shankar, Advocate, GMR
Shri Karan Kartik, GMR
Ms. Suparna Srivastava, Advocate, PGCIL
Shri A.M. Pavgi, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) The petitioner has set up 1050 MW generating station at Dhenkanal, Odisha. On 24.2.2010, the petitioner entered into a BPTA with PGCIL for grant of Long Term Open Access for 800 MW and furnished two bank guarantees of ` 17.50 crore and ` 22.50 crore as security towards the damages recoverable by PGCIL in the event of failure to complete the generation project and dedicated transmission line.

(b) All three units of the generating station have been commissioned on April, 2013, November, 2013 and March 2013. The dedicated transmission line has been commissioned on 21.12.2014. Accordingly, the petitioner has complied with its obligations under the BPTA for the purpose of bank guarantees had furnished.

(c) PGCIL vide its letter dated 17.2.2015 directed the petitioner to extend the validity of the bank guarantees (BGs) and also directed the banks to treat the letter as a claim for invocation of the bank guarantees in case the validity of the bank guarantees is not extended by the petitioner.

(d) PGCIL vide its letter dated 17.7.2015 requested the petitioner to open LC of ` 22.51 crore. However, PGCIL has not operationalized the LTA till date despite repeated requests and the petitioner is selling power on short term basis.

(e) The petitioner through its various letters objected to the illegal demand for extension of the bank guarantees and requested PGCIL to return the bank guarantee as generating station and the dedicated transmission line have already been commissioned. Since no response was received from PGCIL, the petitioner under protest extended validity of bank guarantees till 30.9.2015.

(f) Learned senior counsel requested the Commission to direct PGCIL to return the bank guarantees.

2. Learned counsel for PGCIL submitted as under:

(a) Since the petitioner has not opened LC in terms of the provisions of clause 2 of the BPTA and clause 3.6.3 of the Billing, Collection and Disbursement Procedure approved under Sharing Regulations, LTA was not operationalized.

(b) PGCIL has the right and is entitled to seek extension of the bank guarantees till the petitioner opened the LC and furnished the bank guarantee as required under clause 2 of the BPTA, failing which PGCIL is entitled to encash the same.

(c) A combined reading of the provisions of clauses 6 and 2 of the BPTA shows that right from the grant of LTA to the petitioner and during the construction of the generation project together with its transmission system and thereafter during the entire period of power transmission by the petitioner under the LTA granted to it, it is necessary that an adequate security mechanism is available with PGCIL. Therefore, there is system of security mechanism to be given at different stages. The provisions of security mechanisms are such that when one security expires, another one comes in its place.

(d) PGCIL has completed the transmission system for operationalization of LTA of the petitioner.

3. In response to the Commission`s query regarding reasons for non-operationalization of LTA and amount for which LC is to be opened by the petitioner, the learned counsel for PGCIL submitted that the transmission systems for operationalization of LTA have been commissioned and LTA of the petitioner can be

operationalized subject to opening of LC of approximately of ` 22.50 crore by the petitioner. The Commission directed the petitioner to file the status of operationalization of the LTA within one week.

4. The Commission observed that the amount of BGs submitted by the petitioner is more than required LC and directed PGCIL to return the excess amount of ` 17.50 crore to the petitioner immediately. The remaining amount of BG shall be returned to the petitioner after opening of LC for operationalization of LTA. The Commission further directed the petitioner to open required LC for operationalization of LTA within one week and PGCIL to operationalize LTA of the petitioner within one week thereafter. The Commission directed the petitioner and the respondent to submit a report with regard to return of BG and opening of LC within three weeks thereafter. The Commission directed that due date of filing the status and report shall be complied with and no further extension on that account shall be granted.

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

By order of the Commission

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