

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 79/MP/2016
with I.A. 14/2016
and I.A.15/2016**

- Subject : Petition under Section 79(1) (c) and 79(1)(k) read along with section 79 (1) (f) of the Electricity Act, 2003 read with Regulation 12(6) of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2010 along with Regulation 111 and Regulation 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Clause 3.5.6 of the Billing, Collection and Disbursement (BCD) Procedure under the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and Losses) Regulations, 2010 read with Regulation 2 (1) (i) of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012.
- Date of hearing : 2.6.2016
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : Maruti Clean Coal and Power Ltd.
- Respondent : Power Grid Corporation of India Limited
- Parties present : Shri Abinav Vashisht, Senior Advocate, MCCPL
Ms. Sanjana Ramachandran, Advocate, MCCPL
Shri Praveen, MCCPL
Shri Gautam Chawla, Advocate, PGCIL
Ms. Akansha Tyagi, Advocate, PGCIL
Shri Deep Rao, Advocate, PGCIL
Shri Aryaman Saxena, PGCIL
Shri Manju Gupta, PGCIL

Record of Proceedings

Learned senior counsel for the petitioner submitted as under:

(a) Due to force majeure event the petitioner could not operationalize its generating station which became operational and started functioning on 1.6.2016.

(b) As per the Bulk Power Transmission Agreement and the Transmission Service Agreement, the Letter of Credit of ₹ 4.5 crore and ₹ 3.2 crore had to be provided by the petitioner which was not in dispute.

(c) On 28.10.2015, the bottom ash hopper of the generating station was collapsed. Therefore, the petitioner could not evacuate power and could not utilize the Long Term Access (LTA) granted to it by PGCIL and therefore, the petitioner is not liable to pay Point of Connection charges sought to be levied by PGCIL for the months of February, March and April 2016.

(d) The petitioner, vide its letter dated 28.12.2015, informed PGCIL regarding Force Majeure events, wherein it was brought to the notice of PGCIL that due to major accident, the petitioner was not in position to evacuate the power till the plant becomes fully operational. The lapse of two months in informing PGCIL was not relevant and the question of delay as alleged by PGCIL in its reply to the force majeure notice need not be gone into as the same caused no loss to PGCIL.

(e) PGCIL has contended that the communication dated 28.12.2015 cannot be treated as a valid force majeure notice, since the notice was not given under the TSA and therefore could not be considered as a valid force majeure notice. As per clause 2.12 of the TSA, in case of conflict of terms of BPTA and TSA, the terms of the TSA would supersede only as far as sharing of transmission charges were concerned. Therefore, the contention of PGCIL is not valid as the TSA was not operational on that date and its terms would not apply. The notice sent under BPTA by the petitioner was a valid force majeure notice.

(g) The petitioner vide its letter 3.2.2016 informed PGCIL that the Long Term Access was obtained on tentative target reason basis and the plant was not likely to be operational as per latest estimates before June 2016 and the LTA may be used for other medium and short term DICs instead of blocking the same for the petitioner as the same could not be used due to force majeure event and in the absence of beneficiaries.

(h) As per the BPTA, the petitioner had an agreement for 25 years, according to which the petitioner would be paying its bills and would be maintaining the LC. The action of encashment of bank guarantee was uncalled for and PGCIL should not have done the same as the petitioner would be in business throughout.

(i) The petitioner was not able to use the transmission system for event beyond its control and information for the same was provided well in advance.

(j) As per Clause 14.2 of the Transmission Service Agreement, any event which prevents or unavoidably delays an affected party in the performance of its obligations is a force majeure event. Therefore, the petitioner being the 'Affected Party' is entitled to claim relief for force majeure event as provided under clause 14.6 and is not liable to pay the POC bills for the months of February, March and April, 2016 raised by PGCIL.

(k) On 20.5.2016, PGCIL has already invoked bank guarantee for Rs. 4.5 crore. Therefore, the bills raised by PGCIL should be withdrawn and the injunction granted by the Commission should continue.

2. Learned counsel for PGCIL submitted as under:

(a) As per the internal inquiry report, the accident does not fall in any of the clauses of force majeure events and had occurred due to the default of the petitioner.

(b) The Bank Guarantee of Rs.4.5 crore was encashed due to pending bills of Rs. 11 crore due from February 2016. The charges were to be recovered as the event was not a force majeure event and the petitioner should not get any benefit for the same. The petitioner did not disclose about insurance taken by it.

(c) After the commissioning of the unit on 30.7.2015, the units had undergone frequent tripping and were taken under shutdown.

(d) Under clause 14.3.6 of the TSA, the petitioner's case is excluded from being declared as force majeure event, since the act of the petitioner is negligent in itself which lead to breakdown of machinery in the generating station of the petitioner and the petitioner was aware of the probable causes of the accident which was under its control.

(e) LTA was operationalised on 1.2.2016 and thereafter the PoC bills for the months of February, March and April, 2016 were raised.

(f) As on date, total 11.8 crore are outstanding against the petitioner. Out of which, Rs. 4 crore has been encashed through LC. The petitioner has not liquidated the outstanding amount of Rs. 4.2 crore and Rs. 3.5 crore for the months March and April, 2016 respectively.

(g) Learned counsel referred to Commission's order dated 3.2.2014 in Petition No. 78/MP/2013 and submitted that in the said order, the effect of non-payment of transmission charges was taken seriously by the Commission. The Commission in the said order held that the non-payment of transmission charges would bring to a standstill the entire regulatory mechanism which has been evolved and put in

place in order to supply safe, reliable and quality power to the consumers and would act as a dampener to the investment in the transmission sector.

(h) The Commission in order dated 24.8.2015 in Petition No. 111/MP/2014 [Hindustan Electricity Generation Company Limited V Power Grid Corporation of India limited] had observed that the provision of bank guarantee has been made to ensure seriousness among the LTA applicants.

3. Learned senior counsel in its rebuttal submitted as under:

(a) The issue of insurance is a separate issue and cannot be linked with force majeure event and the validity of the corresponding PoC bills raised by PGCIL needs to be decided.

(b) The internal inquiry report clearly shows that the bottom ash hopper had collapsed which was beyond the control of the petitioner and the accident was a force majeure event.

(c) The unit getting collapsed was not intentional. The petitioner had made huge investments to carry out its generation business and not to close down its own operations. The petitioner was successful in starting its unit from 1.6.2016. The bills which would be raised from this date, would be duly paid in time.

(d) The encashment of bank guarantee of Rs. 4.5 crore is violation of the order of the Commission dated 26.5.2016. The encashment of bank guarantee of Rs. 4.5 crore has affected the petitioner's financial condition.

(e) The orders relied upon by PGCIL were on the point of force majeure and the same would not apply to the present facts.

4. After hearing the learned senior counsel for the petitioner and learned counsel for PGCIL, the Commission reserved the order in the petition.

By order of the Commission

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