

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 95/MP/2016
With IA. No. 23/2016**

Coram:

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

Date of Order: 27th of December, 2016

In the matter of

Petition under Section 79 (1) (f) read with Section 79 (1) (b) of the Electricity Act, 2003 for adjudication of disputes arising from the termination of the Power Purchase Agreement (PPA) dated 9.7.2010 by the Bihar State Power (Holding) Company Limited.

And

In the matter of

Essar Power (Jharkhand) Limited
Lower Ground Floor,
Hotel Conclave Boutique,
A-20, Kailash Colony, New Delhi-110 048

....Petitioner

Vs

Bihar State Power (Holding) Company Limited
1st Floor, Vidyut Bhawan,
Bailey Road, Patna-800 021, Bihar

...Respondent

Parties Present:

Shri Deep Rao, Advocate, Essar
Shri Gautam Chawla, Advocate, Essar
Shri Sumant Nayak, Essar
Ms. Shruti Verma, Essar
Shri Navin Prakash, Advocate, BSP(H)CL
Shri Himanshu Shekhar, Advocate, Jharkhand
Shri Jamnesh Kumar, Advocate, Jharkhand

ORDER

The petitioner, Essar Power (Jharkhand) Limited, has filed the present petition seeking a direction to quash the letter No. 155/Trans/Misc/IS-105/2014 issued by the Bihar State Power (Holding) Company Limited. The Commission issued notice to the respondent on maintainability of the petition and directed the parties to complete the pleading in that respect.

2. The petitioner vide its letter dated 16.12.2016 has placed on record the copy of the judgment and order dated 28.10.2016 passed by the Hon`ble High Court of Judicature at Patna in Letters Patent Appeal No. 1978 of 2016 in Civil Writ Jurisdiction Case No.10122 of 2015 and sought permission to withdraw the petition on the basis of the direction of the Hon`ble High Court in Para 22 of the said judgment. On 20.12.2016, learned counsel for the petitioner appeared before the Commission and requested for withdrawal of the petition.

3. Hon`ble High Court in Para 21 and 22 of the judgment and order dated 28.10.2016 has directed as under:

“21. It is, however, made clear that since the order dated 18.6.2016, passed by the respondent No.1, Power Company, is based on the impugned observations made in CWJ No. 10122 of 2015, the order, dated 18.6.2016, aforementioned is also bad in law and, therefore, needs to be set aside, which we hereby do and it is hereby accordingly directed the appellant`s representation, dated 28.4.2014, made to the respondent No. 1, Power Company, be considered afresh on its own merit uninfluenced by any of the observations made on the merit of the appellant`s case by the learned single judge in the order, under appeal.

22. The appellant shall, however, withdraw its petition, which has been filed before CERC and we leave it open to the Bihar Electricity Regulatory Commission (BERC) to take a decision afresh on the dispute between the parties, if and when the dispute reaches the BERC.”

4. Taking note of the submission of learned counsel for the petitioner and directions of the Hon`ble High Court of Judicature at Patna in Para 22 of the order dated 28.10.2016, the petition is allowed to be withdrawn. Accordingly, Petition No. 95/MP/2016 along with IA No. 23/2016 is disposed of as withdrawn.

Sd/-
(Dr. M.K.Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson