

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 106/MP/2015

Coram:

ShriGireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Date of Order : 7th of September, 2016

In the matter of

Petition under Section 79 (1) (c) and (f) and other applicable provision of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in the interState transmission and related matters) Regulations, 2009 against the action of the respondent in threatening to cancel the open access and encashment of bank guarantee.

And

In the matter of

NSL Nagapatnam Infrastructure Private Limited
NSL ICON, Door No. 6-2-684/2/A
Plot No. 1 to 4, Road No. 12 Banjara Hills,
Hyderabad- 500034

....Petitioner

Vs

Power Grid Corporation of India limited
“Saudamini”, Plot No. 2,
Sector 29, Gurgaon (Haryana) – 122001

...Respondent

Parties present:

ShriAnand K.Ganesan, Advocate, NSL

Shri T.N. Pathak, NSL

Shri B.S. Rao, NSL

ShriSitish Mukherjee, Advocate, PGCIL

ShriGautamChawla, Advocate, PGCIL

ShriAkanshaTyagi, Advocate, PGCIL

ShriDilipRozekar, PGCIL

ORDER

Brief Facts of the Case:

The petitioner, NSL Nagapatnam Infrastructure Private Limited, has filed the present petition under Section 79 (1) (c) and (f) of the Electricity Act, 2003 read with Regulation 32 of the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in the inter State transmission and related matters) Regulations, 2009 (“hereinafter Connectivity Regulations”) seeking direction to Power Grid Corporation of India Ltd (hereinafter referred to as the Central Transmission Utility or CTU) not to encash the bank guarantee of Rs.1.24 crore furnished by the petitioner as security in favour of PGCIL.

2. The petitioner, NSL Nagapatnam Infrastructure Private Limited proposed to set up a 2 X 660 MW Thermal Power Station (hereinafter referred to as “the Project”) based on Super Critical Technology at Thalachangadu Village, Tharagambadi Taluk, Nagapattinam District of Tamil Nadu. The project was scheduled to be commissioned in the year 2014. The petitioner made an application to CTU for grant of long term open access on 19.1.2009 for 800 MW. CTU, after carrying out the necessary system studies, decided to grant long term access to the petitioner and vide its letter dated 10.12.2010 intimated about the grant of long term access to the petitioner for 800 MW with effect from 2014. In the said letter dated 10.12.2010, it was intimated that the capacity on the identified transmission system would be allocated to the developers whosoever signed the BPTA and submitted the BG on first come first serve basis. The

petitioner vide its letter dated 21.12.2010 intimated CTU that it was interested in applying for grant of Connectivity and LTA under Connectivity Regulations, with the same priority, without any change in the commissioning schedule of the project and it was willing to furnish the required BG as per the Connectivity Regulations. In response, CTU vide its letter dated 22.12.2010 informed the petitioner that the earlier granted LTA under Open Access Regulations, 2004 would be treated as cancelled. The petitioner made a fresh application to CTU on 15.2.2011 for grant of Connectivity and LTA for 1240 MW accompanied by non-refundable application fee and bank guarantee of Rs1.24 crore along with status of the project in accordance with the Connectivity Regulations and Detailed Procedure issued thereunder. The petitioner was granted the LTA and Connectivity for 1240 MW and intimation to that effect was sent by CTU on 17.8.2011. CTU while conveying the grant of LTA also informed that the petitioner would have to enter into long term access agreement within 30 days of receipt of the draft agreement. CTU vide its letter dated 24.10.2011 forwarded draft agreement for long term access to the petitioner for signing. The petitioner was seeking time for signing the LTA Agreement and CTU had obliged by acceding to the request of the petitioner. The petitioner vide its letter dated 29.12.2012 intimated PGCIL that necessary Cauvery clearance was expected to be granted by February 2013 and Consent for Establishment was likely to be received from TNPCB by March 2013 for commencement of civil construction. The petitioner in the said letter requested CTU to grant time till March 2013 to sign the LTA Agreement. In the 15th Meeting of Connectivity and LTA Applications, it was decided to grant time to the petitioner till July 2013 to sign the LTA Agreement. Subsequently, the petitioner had been requesting for

extension of time for signing of the LTA Agreement which was being granted by CTU. In the 17th meeting of the Southern Region constituents regarding LTA and Connectivity Applications in the Southern Region, the applicant was granted time till 31.1.2015 to sign the LTA Agreement.

3. Since the petitioner did not sign the LTA Agreement, CTU vide its letter dated 5.3.2015 gave a final opportunity to the petitioner for signing of the LTA within 15 days failing which the LTA would be cancelled and bank guarantee would be revoked. The said letter is extracted as under:

“The CTU is the nodal agency for grant of Long Term Access under the CERC (Grant of Connectivity, Medium-term Open Access and Long-term Open Access to Inter-State Transmission) Regulation, 2009. The applicant to whom LTA is granted is obligated to sign the LTA agreement as per Regulation 15 of the CERC LTA Regulations, 2009.

Regulation 15 of the Connectivity Regulations provides as under:

“The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure”

Further, Sub-clauses (b)(i) and (b)(ii) of Clause 24 of the Detailed Procedure made under Connectivity Regulations provides as under:

“The nodal agency shall intimate grant of long-term access on format [FORMAT-LTA-5] indicating identified system strengthening with direction to the applicant to enter into Long-term access agreement Bulk Power Transmission Agreement (BPTA) [or Long Term Transmission Agreement] with CTU within thirty days.”

Further, clause 23.5 (iii) of the Detailed Procedure provides that if the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter, it shall be a sufficient condition for encashment of bank guarantee.

Thus, your obligation to sign the Long Term Transmission Agreement is patently in the Regulations and the Detailed Procedure. However, despite the fact that Long Term Access was granted to you on 17.08.2011, you have not signed the LTA Agreement. It may be noted that you have had several opportunities for doing the same. However, you have failed to sign the LTA agreement.

A final opportunity is given to you to sign the LTA Agreement within 15 days of receipt of this notice, failing which the Bank Guarantee shall be liable to be invoked and the Long Term Access granted to you shall be liable to be cancelled.”

5. In the 18th Meeting of Southern Region constituents held on 7.3.2015, the following decision was taken with regard to the LTA and Connectivity of the petitioner on account of the petitioner’s failure to sign the LTA Agreement:

“AGM (CTU-Planning) explained that NSL Nagapatnam Power and InfratechPvt. Ltd. was also provided time extension up to 31.1.2015 was also provided time extension up to 31.1.2015 within which LTA Agreement is to be executed. However, till date NSL, Nagapatnam Power and Infratech Pvt. Ltd. has not signed LTA Agreement. Representative from NSL Nagapatnam Power and Infratech Private Limited also requested for time extension as they are constrained due to various clearances required.

In view of the above, it was decided to initiate the action for withdrawal/cancellation of Connectivity and LTA granted.”

4. In the above background, the petitioner has filed the present petition filed the present petition seeking extension of time to sign the LTA Agreement and for restraining CTU not to encash the Bank Guarantee.

Case of the Petitioner:

5. The petitioner has submitted that it has acquired the entire land for construction of power plant, achieved financial closure, completed the bidding process for award of the EPC contract, obtained coal linkage and various other permissions and approvals required for the project except no objection/clearance certificate i.e. CRZ clearance and Consent for Approval (CFE) of Tamil Nadu Pollution Control Board (TNPCB) for establishment of the generating station. The petitioner has submitted that as the project is proposed in the coastal region and coal is expected to be received through Coal

Jetty, it made an application to the Director, Department of Environment, Government of Tamil Nadu on 28.3.2010 for grant of CRZ clearance for the Coal Jetty. After receiving CRZ Clearance, the Consent for Establishment (CFE) is also issued by the State Pollution Control Board under the Water Act and Air Act based on the appraisal of the Project, as a last clearance for initiation of construction works, subsequent to grant of all other clearances. The petitioner has submitted that the Department of Environment, Govt. of Tamil Nadu vide its letter dated 3.6.2010 intimated the petitioner that since the Project is proposed to be located within 5 kms from the Cauvery River, the project at the said site cannot be permitted in terms of the Government of Tamil Nadu, Environment and Forest Department Order (GO) No. 127, dated 8.5.1998. Consequently, the CRZ Clearance for the Jetty and Consent for Establishment for the Project was not granted. The petitioner has submitted that aggrieved by the said decision of Environment and Forest Department dated 8.5.1998, the petitioner approached the Hon`ble High Court of Madras on 29.6.2012. Hon`ble High Court of Madras referred the matter to the National Green Tribunal, Chennai Bench on 25.3.2013. The National Green Tribunal (NGT) vide its order dated 23.9.2013 disposed of the matter by directing Government of Tamil Nadu to re-consider the petitioner's application dated 7.6.2010 seeking exemption from the applicability of the 'distance rule' on merits and in accordance with law. Pursuant to direction of the NGT, the Department of Environment and Forests, Government of Tamil Nadu considered the matter and vide its letter dated 10.1.2014 rejected the petitioner's request for CRZ Clearance for the Jetty and Consent for Establishment for the Project.

6. The petitioner has submitted that it is entitled for grant of extension of time and protection against the encashment of bank guarantee due to the following reasons:

(a) In the absence of the distance exemption with respect to river Cauvery and CRZ and CFE clearance, the petitioner is not able to execute the project, including the formalities of execution of LTA Agreement and payment of fresh construction bank guarantee of Rs.62 crore. The petitioner has submitted that non-grant of CRZ and CFE clearances are beyond the control of the petitioner and constitute force majeure. It is therefore not proper on the part of CTU to encash the bank guarantee of Rs.1.24 crore furnished by the petitioner as a security particularly when the petitioner cannot sign the LTA Agreement for reasons beyond its control.

(b) CTU has been extending the period for executions of the LTA Agreement in view of the certain genuine issues faced by the petitioner. However, CTU vide its letter dated 5.3.2015 threatened the invocation of the Bank Guarantee of Rs. 1.24 crore and cancellation of the LTA granted if the LTA Agreement is not executed within 15 days of the notice. CTU is estopped from cancelling the LTA and encashing the bank guarantee while CTU in similar circumstances has been granting time.

(c) Regulation 12 (5) of the Connectivity Regulations does not create a strict liability as the term used therein is 'may' which implies discretion and necessarily involves examination of each case on its merits before any action is to be taken. In the present case, CTU has already examined the case of the petitioner and

has taken view to extend the time and not to encash the BG pending resolution of the issues faced by the petitioner. The contention of PGCIL that the petitioner should proceed to execute the LTA Agreement, provide the construction BG of Rs. 5 lakh per MW and thereafter urge the issue of force majeure in terms of the LTA Agreement is incorrect and goes contrary to the very scheme of development of the transmission system.

(d) There is no saturation in open access in the area. Even in the event, the petitioner signs the LTA, CTU has to establish sub-station and associated facilities to provide transmission facilities to the petitioner. The said transmission facilities including the sub-station are required to be established by PGCIL after execution of the LTA with the petitioner and other similarly placed generators. It is not the case that PGCIL has earmarked or blocked existing transmission facilities for the petitioner, which presently could be used by others.

(e) CTU has neither claimed any loss nor has been able to quantify or prove or establish any loss for which compensation is payable. Unless and until CTU is in a position to prove any loss suffered, CTU is not entitled to encash the bank guarantee.

Reply of CTU

7. CTU in its reply has refuted the claims of the petitioner and has submitted that the petitioner has no case for either seeking extension of time or for any injunction against encashment of bank guarantee. With regard to the specific averments of the petitioner, CTU has submitted as under:

(a) As per Regulation 15 of Connectivity Regulations read with Paragraph 24(b)(i)(i) of the Detailed Procedure, an LTA applicant is required to sign the LTA Agreement within 30 days from the date of grant of LTA failing which CTU is entitled to encash the bank guarantee furnished by the LTA applicant. Therefore, it is mandatory for the petitioner to sign the LTA Agreement with CTU in order to avoid signing of the bank guarantee.

(b) The word "may" appearing in Clause (5) of Regulation 12 of the Connectivity Regulations and Paragraph 23.5 of the Detailed Procedure can be interpreted as "shall" in order to uphold the legislative intent of the provision of bank guarantee i.e. to ensure that only serious players apply for LTA. Paragraph 23.5 of the Detailed Procedure specifies that the BG may be encashed by the nodal agency if the LTA applicant fails to sign the LTA Agreement with PGCIL. The intention behind this provision is to foster seriousness in the process of grant of LTA and to ensure commitment of the project developers to use the transmission line for which LTA has been sought and that there is no abuse of process for grant of LTA, which is the scenario in the instant case.

(c) As regards the clearance from the Tamil Nadu Pollution Control Board, the petitioner has consistently led CTU to believe that it was very close to obtaining the same and therefore, the requests for extensions for signing of LTA were granted from time to time by CTU. However, all such extensions were allowed after examining the requests of the petitioner during the meetings of SR Constituents, Central Electricity Authority, Regional Power Committee, etc.

(d) Force majeure, in the absence of a contractual document, cannot be a ground for non-signing of LTA Agreement. It is a settled principle of law that a force majeure claim is a creature of contract or clause in a contract that allocates risks resulting from frustration of the underlying contract and any interpretation and meaning of force majeure is purely based on principles of contractual interpretation. In the present case, the force majeure cannot be a ground for non-signing of the LTA Agreement and for restraining the CTU from encashment of bank guarantee. The Appellate Tribunal for Electricity in Jayaswal Neco case has held that Connectivity Regulations are so clear that force majeure cannot be a ground for non-signing of the LTA.

(e) CTU granted extensions considering the hardship faced by the petitioner and despite extensions, the petitioner has failed to obtain required clearances. There cannot be estoppels against the law and in the present case, the demand for extension of time is not in the consonance with the Connectivity Regulations and Detailed Procedure. Therefore, CTU cannot be compelled to do something which is contrary to law. The request of the petitioner for an ad infinitum extension for signing of LTA Agreement should be rejected in the overall interest of power sector.

8. The Commission directed the CTU to submit certain information such as the date of coming into effect of the LTA granted to the petitioner, reasons for grant of extensions of time to the petitioner, whether notices have been issued to the generators similarly situated as the petitioner, status of the transmission system, and coordination

activity undertaken by CTU for development of the transmission system matching with the commissioning of the generation project. CTU vide its affidavit dated 11.6.2015 has submitted the required information which are noted hereinafter. As regards the date from which LTA would be effective, CTU has submitted that the petitioner was granted LTA for 1240 MW on 17.8.2011 with effective date of LTA as July 2015, subject to the timely signing of the LTA Agreement and furnishing of Construction Bank Guarantee. With regard to reasons for grant of extension time to the petitioner to sign LTA Agreement, CTU has submitted that the petitioner was granted LTA primarily on the basis of it having already met four major milestones out of five and with respect to the pending milestone i.e. clearance from the Pollution Control Board, the petitioner consistently led CTU to believe that it was very close to obtaining the same and therefore, based on the specific requests made by the petitioner from time to time, the extension for signing of LTA Agreement was granted. CTU has submitted that in a number of cases where extension was granted to individual power producers in the past for similar reason, the power producers have been able to come up with their generation projects within a reasonable time. In the year 2012-13 and 2013-14, the generation by IPPs has overtaken Central Sector Generating Stations in capacity-addition, thus justifying the CTU's intention behind grant of extensions in the past in case of genuine problems being faced by IPPs in obtaining necessary clearances. With regard to withdrawal/cancellation of the LTAs granted on similar grounds, CTU has submitted that in eleven cases including the petitioner where the signing of LTA Agreement had fallen overdue, CTU issued notices to all generators on 5.3.2015 giving a final opportunity to sign the LTA Agreement within 15 days and informing the

applicants that failure to execute LTA Agreement would entail the cancellation of LTA and invocation of bank guarantee. CTU has submitted that none of the eleven applicants have entered into LTA Agreement. With regard to status of transmission system at the time of intimation by the petitioner regarding non-grant of CRZ and CFE clearances, the petitioner has submitted that the transmission system was at an advance stage of implementation viz. by that time the bidding process was already over, the transmission licensee was already identified and the petitions for grant of transmission licence and adoption of tariff (Petition No. 122/2012) were filed before the Commission. As regards the current status of the transmission system, CTU has submitted that the construction of various transmission elements was undertaken by CTU for strengthening based on the capacities allocated to LTA applicants and the said transmission system was expected to be commissioned by December, 2015. Finally, with regard to the issue of coordination by PGCIL for the development of associated transmission system matching with the commissioning of generation project, CTU has submitted that in the instant case of Nagapattinam/Cuddalore area, comprehensive transmission system was evolved for a number of generation projects including the petitioner's project. The evolved transmission system *inter-alia* comprised of 765 kV transmission corridors extending from Nagapattinam Pooling Station to load centres in Western Region via Salem, Madhugiri, Narendra, Kohlapur, Pune/Padhge. The development of transmission system vis-a-vis the generation projects in the area was coordinated and looking into the power injection from prospective generation developers, the trunk transmission corridor only up to Madhugiri was taken up for implementation.

9. Learned counsel for the petitioner submitted during the hearing that the petitioner could not sign the LTA Agreement due to non-availability of distance exemption with reference to the River Cauvery and consequent CRZ and Consent for Establishment (CFE) clearance. Learned counsel for the petitioner submitted that Regulation 12(5) of the Connectivity Regulations does not create a strict liability. On the other hand, the term used therein is 'may'. The said regulation applies to cases of withdrawal of application which is not the case with the petitioner, and that too, only to protect where the loss is caused to CTU. If there is no loss, prejudice or damage caused to PGCIL, the question of encashment and appropriation of the amount of the bank guarantee does not arise. Learned counsel for the petitioner further submitted that reliance placed by CTU on the decision of the Hon`ble Appellate Tribunal for Electricity in *Jayaswal Neco Urja Limited Vs. Power Grid Corporation of India Limited* (Appeal No. 197 of 2014) is misplaced as the question involved in the present petition is whether CTU is entitled to appropriate the amount of bank guarantee in the absence of any proof of loss or damages suffered and this question was never an issue before Appellate Tribunal. Learned counsel submitted that the cost of system studies undertaken by CTU has been independently compensated by the petitioner and it is not the case that the bank guarantee is required for compensating the expenditure incurred in system studies. As per third proviso to Regulation 12 (1) of the Connectivity Regulations, CTU should proceed to establish the transmission system without ascertaining the progress of the generation projects. The transmission elements were constructed based on the capacities allocated to the LTA applicants. At present, the system is being fully utilized by IL&FS generating company and there is no loss whatsoever to the CTU. Learned

counsel for the petitioner submitted that the Commission in order dated 13.12.2011 in Petition No. 154/MP/2011 had specifically recorded the submission of the representative of CTU that IL&FS Project (1200 MW) was in progress and there was a possibility of PPN generating station (1080 MW) being implemented and that even if one generating project materialised, the transmission line would become necessary. The said order is a clear admission on the part of the CTU that the transmission line was not made for the petitioner and, therefore, no capacity would be stranded on account of the petitioner and consequently, no compensation is payable to PGCIL.

10. Learned counsel for CTU submitted that as per Regulation 15 of Connectivity Regulations read with Paragraph 24(b)(i)(i) of the Detailed Procedure, the LTA applicant is required to sign the LTA Agreement within 30 days from the grant of LTA failing which PGCIL can encash the BG furnished by the LTA applicant. Therefore, it is mandatory for the petitioner to sign the LTA Agreement with PGCIL. The petitioner was requested on 17.8.201 to sign the LTA Agreement within a period of 30 days, failing which LTA granted would be liable to be cancelled. The word "may" used in Paragraph 23.5 of the Detailed Procedure and Clause (5) of Regulation 12 of the Connectivity Regulations can be interpreted as "shall" in order to uphold the legislative intent for provision of BG i.e. to ensure that only serious players apply for LTA. Learned counsel for PGCIL submitted that the Hon`ble Supreme Court in Smt. Bachahan Devi and Anr. vs. Nagar Nigam, Gorakhpur and Anr.[AIR 2008 SC (1282)] has held that to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the word has been used, the purpose and the advantages sought to be achieved by the use

of the word. Paragraph 23.5 of the Detailed Procedure provides that the BG may be encashed by the nodal agency if the LTA applicant fails to sign the LTA Agreement with CTU. The intention behind this provision is to foster seriousness in the process of grant of LTA and to ensure commitment of the project developers to use the transmission line for which LTA has been sought and that there is no abuse of process for grant of LTA. Learned Counsel further submitted that grant of *ad infinitum* extension is *ultra-vires* the Act, Connectivity Regulations and Detailed Procedure, and therefore the claim of the petitioner for extension of time is not maintainable. The petitioner should approach again with a fresh application once it has obtained the necessary clearances. Learned counsel for PGCIL submitted that Force majeure, in the absence of a contractual document cannot be a ground for non-signing of LTA Agreement. In this connection, learned counsel relied on the judgement of the Supreme Court in Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd. and Ors., [(2002) 5 SCC] in which it has been held that a force majeure claim cannot be pleaded in the absence of a valid and subsisting contract or a clause. Therefore, the force majeure claim of the petitioner in the present matter is unfounded and unsustainable and deserves to be rejected. Learned counsel for CTU submitted that in the present case, the force majeure cannot be a ground for non-signing of the LTA Agreement and for restraining the CTU from encashment of BG. Learned counsel submitted that even if the LTA intimation letter is considered as a contract, the said letter does not have any provision of force majeure and therefore, the petitioner cannot claim that it is excused from signing the LTA Agreement on account of force majeure. Learned Counsel submitted that the Appellate Tribunal in Jayaswal Neco case has observed that

Connectivity Regulations are so clear that force majeure cannot be a ground for non-signing of the LTA.

Analysis and Decision:

11. We have considered the submissions of the petitioner and the respondent and perused documents on record. The petitioner has sought the following reliefs in the petition:

- a) For a declaration that the delay in the execution of the project is on account of force majeure conditions
- b) CTU be directed to keep LTA granted to the petitioner in abeyance.
- c) Extension of time be granted for execution of the LTA till the grant of CFE.
- d) CTU be restrained from invoking the Bank Guarantee and the operation of the letter dated 5.3.2015 be stayed.

12. It is not in dispute that the petitioner applied for and was granted connectivity and LTA in accordance with the Connectivity Regulations. Regulation 12 of the Connectivity Regulations deals with application for long term access. The said regulation is extracted as under:

“12. Application for long-term access

(1) The application for grant of long-term access shall contain details such as name of the entity or entities to whom electricity is proposed to be supplied or from whom electricity is proposed to be procured along with the quantum of power and such other details as may be laid down by the Central Transmission Utility in the detailed procedure:

Provided that in the case where augmentation of transmission system is required for granting open access, if the quantum of power has not been firmed up in respect of the person to whom electricity is to be supplied or the source from which electricity is to be procured, the applicant shall indicate the quantum of power along with name of the

region(s) in which this electricity is proposed to be interchanged using the inter-State Transmission system;

Provided further that in case augmentation of transmission system is required, the applicant shall have to bear the transmission charges for the same as per these regulations, even if the source of supply or off-take is not identified;

Provided also that the construction of such augmentation of the transmission system may be taken up by the CTU or the transmission licensee in phases corresponding to the capacity which is likely to be commissioned in a given time frame after ensuring that the generating company has released the advance for the main plant packages i.e. Turbine island and steam generator island or the EPC contract in case of thermal generating station and major civil work packages or the EPC contract in case of hydro generating stations for the corresponding capacity of the phase or the phases to be commissioned, subject to a minimum of 10% of the sum of such contract values'

Provided that a generating company after firming up the beneficiaries through signing of long term Power Purchase Agreement(s) shall be required to notify the same to the nodal agency along with the copy of the PPA.

Provided also that in cases where there is any material change in location of the applicant or change by more than 100 MW in the quantum of power to be interchanged using the inter-State Transmission system or change in the region from which electricity is to be procured or to which supplied, a fresh application shall be made, which shall be considered in accordance with these regulations.

(2) The applicant shall submit any other information sought by the nodal agency including the basis for assessment of power to be interchanged using the inter-State Transmission system and power to be transmitted to or from various entities or regions to enable the nodal agency to plan the inter-State transmission system in a holistic manner.

(3) The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted. The bank guarantee shall be in favour of the nodal agency, in the manner laid down under the detailed procedure.

(4) The bank guarantee of Rs. 10,000 /- (ten thousand) per MW shall be kept valid and subsisting till the execution of the long-term access agreement, in the case when augmentation of transmission system is required, and till operationalization of long-term access when augmentation of transmission system is not required.

(5) The bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required.

(6) The aforesaid bank guarantee will stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure.

13. Perusal of Regulation 12 of the Connectivity Regulations reveals that application for long term access shall be submitted containing such details as provided in the Detailed Procedure issued under Regulation 27 of the Connectivity Regulations. The application shall be accompanied by a bank guarantee of Rs 10,000/- (ten thousand) per MW of the total power to be transmitted in favour of the nodal agency, in the manner laid down under the Detailed Procedure. If as a result of system studies, it is found that no further augmentation of the transmission system is required, the applicant will be required to sign an LTA Agreement and the Bank guarantee already paid will remain valid till operationalisation of the LTA. If it is found that augmentation of transmission system is required, then the applicant will be required to enter into LTA Agreement, submit a fresh Bank Guarantee for construction period calculated as per Detailed Procedure and the bank Guarantee given earlier along with the application for LTA shall stand discharged. Regulation 15 deals with execution of LTA Agreement by the LTA applicant consequent to grant of LTA. Regulation 15 provides as under:

“15. Execution of Long-term Access Agreement

The applicant shall sign an agreement for long-term access with the Central Transmission Utility in case long-term access is granted by the Central Transmission Utility, in accordance with the provision as may be made in the detailed procedure. While seeking long-term access to an inter-State Transmission licensee, other than the Central Transmission Utility, the applicant shall sign a tripartite long-term access agreement with the Central Transmission Utility and the inter-State Transmission licensee. The long-term access agreement shall contain the date of commencement of long-term access, the point of injection of power into the grid and point of drawal from the grid and the details of dedicated transmission lines, if any, required. In case augmentation of transmission system is required, the long-term access agreement shall contain the time line for construction of the facilities of the applicant and the transmission licensee, the bank guarantee required to be given by the applicant and other details in accordance with the detailed procedure.”

In accordance with the above regulation, the applicant who has been granted long term access is required to sign Long Term Access Agreement (hereinafter “LTA Agreement”) with the CTU and if any other inter-State transmission licensee is involved, then the applicant is required to enter into a Tripartite LTA Agreement.

14. In the Statement of Reasons to the Connectivity Regulations, the Commission has explained the purpose of bank guarantee as under:

“68. We are of the view that furnishing of Bank Guarantee is required to bring seriousness to the applications made by applicants. However, a provision has been made requiring the bank guarantee to stand discharged with the submission of bank guarantee required to be given by the applicant to the Central Transmission Utility during construction phase when augmentation of transmission system is required, in accordance with the provisions in the detailed procedure. Furthermore, the amount of Bank Guarantee has been reduced from the originally proposed Rs. 1 lakh per MW to Rs. 10,000 per MW.”

It may be observed that in the draft regulations, the Commission had proposed a bank guarantee of Rs.1 lakh/MW which was reduced to Rs.10,000/MW. The said bank guarantee would be discharged when the applicant gives the bank guarantee required for construction phase. The purpose of prescribing bank guarantee is to bring seriousness to the applications made by the applicants. The seriousness of the applications has been sought to be ensured by making the provisions in the Connectivity Regulations and Detailed Procedure that the bank guarantee would be encashed in certain circumstances.

15. As per the Connectivity Regulations, the bank guarantee may be encashed by the nodal agency, if the application is withdrawn by the applicant or the long-term

access rights are relinquished prior to the operationalization of such rights when augmentation of transmission system is not required. Further, Clause 23 (5) of the Detailed Procedure provides that bank guarantee may be encashed by the nodal agency: (i) if the application is withdrawn by the applicant; or (ii) if the long-term access rights are relinquished prior to the operationalization of such long-term access when augmentation of transmission system is not required; or (iii) If the applicant fails to sign the Long Term Access Agreement with CTU or a tripartite agreement with CTU and transmission licensee, as the case may be, and fails to furnish appropriate BG for construction phase, within stipulated time as indicated in the intimation letter;(iv) if the applicant fails to revalidate the earlier furnished BG at least 30 days prior to its expiry; and (v) If the applicant fails to firm up beneficiaries in terms of clause 22.7, 3 years prior to intended date of Long Term Access. Genuine requests for extension of time shall be suitably accommodated on merit upon furnishing of documentary evidence(s). Thus, not signing the LTA Agreement and not furnishing the bank guarantee for construction phase is a valid ground for cancellation of the grant of LTA and encashment of bank guarantee. The Connectivity Regulations do not provide that if the applicant is able to prove that if it is affected by circumstances beyond its control or is prevented by force majeure event which prevents it from signing the LTA Agreement, its bank guarantee should not be encashed.

16. The issue of encashment of bank guarantee in the light of the provisions of the Connectivity Regulations and the Detailed Procedure came up for consideration of the Appellate Tribunal for Electricity in Appeal No.197 of 2014 (Jayaswal Neco Urja Limited

Vs Grid Corporation of India Limited and Another) and the Appellate Tribunal in its judgement dated 15.4.2015 held as under:

“32. Since the Appellant did not sign the LTAA, the Bank Guarantee was encashed. The question is whether the alleged force majeure conditions furnishes a good ground for the Appellant to contend that the Bank Guarantee ought not to have been encashed. The Connectivity Regulations do not anywhere state that if the applicant is able to prove the existence of any circumstances beyond its control or existence of any force majeure conditions, which prevented it from performing the contract, its Bank Guarantee should not be encashed. **The Connectivity Regulations do not prohibit the LTA applicant from withdrawing its LTA application. The Connectivity Regulations provide that in the event the LTA applicant withdraws LTA application, it will not be required to sign the LTAA but it will have to forgo the Bank Guarantee furnished by it along with the LTA application. The Bank Guarantee can then be encashed by the nodal agency. The purpose behind this provision is correctly stated in the impugned order and we concur with the said reasoning. The purpose behind the requirement of furnishing Bank Guarantee and the provisions for its encashment if the LTAA is not signed is to ensure commitment of the project developer to use the transmission line for which LTA has been sought. It gives assurance to Respondent No.1 that the transmission line would not be stranded after it is built. If the LTA applicants are allowed to withdraw the LTA applications without any deterrent like encashment of Bank Guarantee, then the purpose behind the scheme of grant of LTOA will be frustrated.** We, therefore, find encashment of the Appellant’s Bank Guarantee to be perfectly legal.

Thus the Appellate Tribunal has held that the Connectivity Regulations do not prohibit an LTA applicant to withdraw its LTA application and in the event the LTA applicant withdraws the application, it will not be required to sign LTA Agreement but it will have to forego the bank guarantee furnished alongwith the LTA application. The Appellate Tribunal has further held that the purpose behind the requirement of furnishing bank guarantee and the provisions for its encashment if the LTA Agreement is not signed is to ensure commitment of the project developer to use the transmission line for which LTA has been sought. It has also been held that if the LTA applicants are allowed to

withdraw the LTA applications without any deterrent like encashment of bank guarantee, then the purpose behind the scheme of grant of LTA would be frustrated.

17. Let us consider the case of the petitioner in the light of the judgement of the Appellate Tribunal in Appeal No. 197 of 2014. The petitioner applied for Connectivity and LTA on 15.2.2011 for 1240 MW accompanied by a Bank Guarantee of Rs.1.24 crore in accordance with the Connectivity Regulations. In the 12th Meeting of the Southern Region Constituents regarding Connectivity and LTA applications, the petitioner was granted connectivity and LTA for 1240 MW which was intimated to the petitioner by CTU vide letter dated 17.8.2011. Grant of LTA to the petitioner involved system strengthening and in accordance with the Connectivity Regulations read with the Detailed Procedure, the petitioner was required to furnish a bank guarantee for the construction period for an amount of Rs. 62 crore at the time of signing LTA Agreement. The petitioner was required to sign the LTA Agreement within 30 days of the intimation of grant of LTA. However, the petitioner kept on seeking for time to enter into LTA Agreement and CTU in due consideration of the requests of the petitioner extended the period for entering into LTA Agreement. CTU finally gave a notice on 5.3.2015 for signing of LTA Agreement within 15 days failing which the bank guarantee of the petitioner would be encashed. The said letter has been impugned in this petition and stay on the operation of the said letter has been sought. The letter of CTU dated 5.3.2015 requires the petitioner to sign the LTA Agreement within 15 days which the petitioner does not want to sign citing force majeure conditions. As per the Detailed Procedure, failure of the LTA applicant to sign the LTA agreement with CTU or a

tripartite agreement with CTU and transmission licensee (where the system of other transmission licensee is involved) is a ground for cancellation of LTA and encashment of bank guarantee. Since the petitioner has failed to sign the LTA Agreement despite being allowed unusually long time by CTU, the LTA granted to it is liable to be cancelled and the bank guarantee is liable to be encashed. As held by the Appellate Tribunal, under the Connectivity Regulations, the petitioner is not required to sign the LTA Agreement if it withdraws its application and in that event, the petitioner will have to forego its bank guarantee made alongwith the application. In the light of the statutory provisions of Connectivity Regulations and Detailed Procedure and interpretation thereof by the by the Appellate Tribunal in Appeal No.197 of 2014, we are of the view that the petitioner does not have a case for issue of directions to CTU for not cancelling the LTA or for not encashing the bank guarantee.

18. The petitioner has submitted that the execution of its generation project has been effected by force majeure conditions on account of refusal of the Tamil Nadu Pollution Control Board (TNPCB) to issue the CRZ clearance and consent of approval with regard to the CFE clearance which are not within the control of the petitioner. The petitioner has further submitted that in acknowledgement of the force majeure conditions being faced by the petitioner, CTU has been extending the time for execution of the LTA agreement. CTU has submitted that in the absence of a contractual document, force majeure cannot be ground for non-signing of LTA Agreement. CTU has submitted that force majeure claim is a creature of the contract and in the absence of the contract providing for force majeure clause, the petitioner is not entitled to make a

claim on the basis of force majeure. In this connection, PGCIL has relied upon the judgement of the Hon'ble Supreme Court in Industrial Finance Corporation of India Ltd. v. Cannanore Spinning and Weaving Mills Ltd. and Ors. [(2002) 5 SCC] in which it has been held that a force majeure claim cannot be pleaded in the absence of a valid and subsisting contract or a clause in the contract. We do not intend to go into the question whether there exist a contract between the petitioner and CTU on the basis of the intimation by CTU granting LTA to the petitioner or whether a force majeure clause is a condition precedent to claim the protection of force majeure. Application for LTA by an LTA applicant and grant of LTA by the CTU are governed by the statutory provisions of Connectivity Regulations and the Detailed Procedure made thereunder. Therefore, the issues of signing of LTA Agreement and its effect on bank guarantee have to be strictly interpreted on the basis of the relevant provisions of Connectivity Regulations and the Detailed Procedure. The Appellate Tribunal has observed in its judgement dated 15.4.2015 in Appeal No.197 of 2015 that "the Connectivity Regulations do not anywhere state that if the applicant is able to prove the existence of any circumstances beyond its control or existence of any force majeure conditions, which prevented it from performing the contract, its Bank Guarantee should not be encashed." Further, the Appellate Tribunal in para 38 of the said judgement has observed as under:

33. Assuming that the Appellant's contention about the existence of force majeure conditions is correct, so long as Respondent No.1 by its acts of omission or commission has not contributed to the Appellant's being unable to commence operation of its power plant, Respondent No.1 cannot be held responsible for it and encashment of Bank Guarantee cannot be faulted on that count."

19. In the present case, the alleged force majeure is on account of the denial of CRZ Clearance and CFE clearance by the Tamil Nadu Pollution Control Board. In terms of

the Government of Tamil Nadu, Environment and Forest Department (GO) No. 127 dated 8.5.1998, thermal power plants cannot be located within 5 km of the Cauvery River. The petitioner was expected to be aware of the prevalent laws and rules and Government notification with regard to environment while planning the location of the power plant. The petitioner made an application to the Director, Department of Environment & Forest, Government of Tamil Nadu on 28.3.2010 for grant of CRZ clearance for the Coal Jetty for receipt of coal for the Project. Department of Environment & Forest, Government of Tamil Nadu vide letter dated 3.6.2010 denied the CRZ clearance for the project in terms of the GO No. 127 dated 8.5.1998. Aggrieved by the said decision, the petitioner approached the Hon`ble High Court of Madras on 29.6.2012 and the Hon`ble High Court referred the matter to National Green Tribunal, Chennai Bench, on 25.3.2013. National Green Tribunal vide its order dated 23.9.2013 disposed of the matter by directing Government of Tamil Nadu to re-consider the petitioner's application dated 7.6.2010 seeking exemption from the applicability of the 'distance rule' on merits and in accordance with law. Pursuant to direction of the NGT, the Department of Environment and Forests, Government of Tamil Nadu vide its letter dated 10.1.2014 rejected the petitioner's request as under:-

"I am directed to invite your attention to the reference cited and to inform that your request made in the letter dated 7.6.2010 for seeking relaxation of distance criteria ordered in G.O.(MS)No. 127, Environment and Forests Department, dated 8.5.1998 regarding setting up of thermal power plant in the banned area, as specified in the above said G.O., is not feasible of compliance."

The petitioner is stated to have filed WP No. 16965 of 2014 before Hon`ble High Court of Madras which is pending for disposal. From the perusal of the sequence of events, it is clear that the petitioner is seeking exemption of the distance rule as laid down in GO

No. 127 dated 8.5.1998 and has not been successful in this regard as a result of which the petitioner cannot proceed with the power project. Consequently, the petitioner is not signing the LTA Agreement. CTU in no way has contributed to the petitioner's failure to get the CRZ and CFE clearance. In terms of the judgement of the Appellate Tribunal in Appeal No.197 of 2014, the petitioner cannot take shelter of the alleged force majeure event for not signing the LTA Agreement and seeking stay on encashment of bank guarantee.

20. According to learned counsel for the petitioner, reliance placed by CTU on the decision of the Hon`ble Appellate Tribunal for Electricity in Appeal No. 197 of 2014 (Jayaswal Neco Urja Limited Vs. Power Grid Corporation of India Limited) is misplaced as the question involved in the present petition is whether CTU is entitled to appropriate the amount of bank guarantee in the absence of any proof of loss or damages suffered and this question was never an issue before Appellate Tribunal. We are unable to agree with the above contention. In Jayaswal Neco case, the alleged force majeure events were uncertainties in allocation of coal block and non-grant of forest clearance whereas in the present case, the alleged force majeure events relate to denial of CRZ and CFE clearance. Further, in both cases the issue of encashment of bank guarantee on account of non-signing of LTA Agreement is involved. In our view, the case of the petitioner is squarely covered under the judgement of the Appellate Tribunal in Appeal No.197 of 2014.

21. The petitioner has submitted that Regulation 12(5) of the Connectivity Regulations does not create a strict liability as the term used therein is 'may' which

implies discretion and necessarily involves examination of each case on its merits before any action is to be taken. According to the petitioner, CTU has already examined the case of the petitioner and has taken view to extend the time and not to encash the BG pending resolution of the issues faced by the petitioner. Therefore, CTU is estopped from cancelling the LTA and encashing the bank guarantee. Per contra, CTU has submitted that the word "may" used in Paragraph 23.5 of the Detailed Procedure and Clause (5) of Regulation 12 of the Connectivity Regulations can be interpreted as "shall" in order to uphold the legislative intent for provision of BG i.e. to ensure that only serious players apply for LTA. CTU has submitted that it granted extensions considering the hardship faced by the petitioner and despite extensions, the petitioner has failed to obtain required clearances. There cannot be estoppels against the law and in the present case, the demand for extension of time is not in the consonance with the Connectivity Regulations and Detailed Procedure. We have considered the submission of the petitioner and CTU. We have considered the submissions of the petitioner and CTU. The Hon`ble Supreme Court in Smt. Bachahan Devi and Anr.vs. Nagar Nigam, Gorakhpur and Anr.[AIR 2008 SC (1282)] has held as under:

“31. It is well-settled that the use of word `may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word `may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word `may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word `may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word `may' should be interpreted to convey a mandatory force. As a general rule, the word `may' is

permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words 'may', 'shall', and 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

32. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretionary and 'shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'."

Thus, the word 'may' has to be interpreted keeping in view the object and the scheme of the statute, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. Further, where the power is conferred on a statutory body by the use of the word 'may', that power must be construed as a statutory duty. In the present case, the purpose of prescribing a bank guarantee for making the LTA application is to bring seriousness to the application which has been emphasised in the Statement of Reasons. It gives the comfort to the CTU that after the transmission lines are made, it will be used by the project developer. If the LTA applicants are allowed to withdraw the

LTA applications without any deterrent like encashment of Bank Guarantee, then the purpose behind the scheme of grant of LTOA will be frustrated. Therefore, the purpose of prescribing bank guarantee is to foster seriousness among the LTA applicants and help in planning and execution of the inter-State transmission system and to discourage the non-serious players to make the system of LTA non-workable. Seen in the context of the purpose for which bank guarantee has been provided and mischief which it seeks to suppress, the use of the word 'may' in Regulation 12(5) shall be construed as having mandatory nature. Further, Regulation 12(5) confers power on a statutory body like CTU to encash the bank guarantee in certain circumstances and it becomes the statutory duty of the CTU to encash the bank guarantee when the said circumstances arise. We are of the view that the language of Regulation 12(5) and para 23.5 of the Detailed Procedure make it mandatory for CTU to encash the bank guarantee if the LTA applicant does not sign the LTA Agreement.

22. The petitioner has submitted that the CTU has granted extension of period from time to time to sign the LTA Agreement after appreciating the circumstances of the petitioner and therefore, CTU is estopped from denying extension of time and encashing bank guarantee. CTU has submitted that it granted time to the petitioner considering the hardship faced by the petitioner but the extension cannot be ad infinitum which defeats the purpose of the Act and Connectivity Regulations. CTU has further submitted that there cannot be any estoppel against the statute. We are of the view that the Connectivity Regulations prescribes a time period of 30 days for signing the LTA Agreement failing which LTA should have been cancelled and bank guarantee should have been encashed. However, CTU, by taking into account the difficulties faced by the

petitioner, has granted extension after discussion of the proposal in the Standing Committee of the Southern Region constituents on Connectivity and LTA. If extension of time for signing of the LTA Agreement for indefinite period is granted, it will defeat the purpose LTA which is the primary basis for transmission planning as per the Connectivity Regulations. CTU can at any time after the mandatory period of 30 days cancel the LTA and encash the bank guarantee if it is satisfied on the basis of materials before it that extension of time is not in the interest of planning, development and execution of the inter-State transmission system.

23. The petitioner has submitted that CTU has neither claimed any loss nor has been able to quantify or prove or establish any loss for which compensation is payable. According to the petitioner, unless and until CTU is in a position to prove any loss suffered, CTU is not entitled to encash the bank guarantee. On perusal of the provisions of the Regulation 12(5) and Para 23.5 of the Detailed Procedure, we note that there is no linkage between loss suffered by CTU and encashment of bank guarantee. The plain language of the Connectivity Regulations and Detailed Procedure clearly establish that failure of an LTA applicant to sign the LTA Agreement within stipulated period is the sufficient basis for cancellation of the LTA and encashment of bank guarantee. Therefore, we reject the contention of the petitioner that only when the compensation for the loss suffered by CTU is payable, then only bank guarantee can be encashed.

24. The petitioner has sought a direction to restrain the CTU from encashing the bank guarantee. In this connection, it is useful to refer to the observations of the Appellate Tribunal in Appeal No.197 of 2014 with regard to restrain on encashment of

bank guarantee. Relevant paras of the judgement dated 15.4.2015 in Appeal No.197 of 2014 are extracted as under:

“34. It is well settled that restraint on encashment of Bank Guarantee can be granted only in exceptional circumstances. There is a long line of judgments of the Supreme Court stating so. The Supreme Court in Himadri Chemicals & Industries Ltd. held that such restraint can be put only if it is proved that there is a fraud in connection with the Bank Guarantee which vitiates the very foundation of the Bank Guarantee and where encashment of Bank Guarantee results in irretrievable harm or injustice to one of the parties concerned. We need not refer to the other judgments which reiterate the same principles.

35. We have not examined whether the force majeure conditions, in fact, existed or whether irretrievable harm or injustice is caused to the Appellant. **As already stated by us, the Connectivity Regulations are so clear that the encashment of the Bank Guarantee cannot be faulted. The rationale behind the encashment of the Bank Guarantee has also been examined by us and it has impressed us.** If as contended by the Appellant, the Appellant has suffered any loss or damages, in our opinion, Respondent No.1 cannot be held responsible for it.”

The above observations of the Appellate Tribunal are applicable in all fours in the present case also. In the light of the unambiguous provisions of the Connectivity Regulations, we are of the view that the encashment of bank guarantee by CTU for failure on the part of the LTA applicant to sign LTA Agreement should not be interfered with.

25. In the light of the above discussion, the prayers of the petitioner are disposed of as under:

(a) In the first prayer, the petitioner has sought a declaration that the delay in the execution of the project is on account of force majeure conditions and has sought directions to CTU to keep the Long Term Access granted by it in abeyance and grant extension of time for execution of the LTA till the grant of CFE and

consequent financial closure and establishment of the project by the petitioner. Under the provisions of the Connectivity Regulations, there is connection between the force majeure conditions suffered by the petitioner and cancellation of LTA and encashment of bank guarantee on account of failure to sign the LTA Agreement. Therefore, there is no requirement to go into the question whether the delay in execution of the petitioner's project is on account of force majeure or not. As regards the prayer for keeping the long term access granted to the petitioner in abeyance and grant extension of time till the grant of CFE, financial closure and execution of the project, we are of the view that the petitioner has been granted sufficient time by CTU for signing the LTA Agreement. It is neither permissible under the Connectivity Regulations and the Detailed Procedure nor in the interest of planning and development of the inter-State transmission by CTU to grant extension of time ad infinitum to the petitioner to sign the LTA Agreement. Accordingly the prayer is rejected.

- (b) In the second prayer, the petitioner has sought a direction to restrain CTU from encashing the bank guarantee. In the light of the discussion in this order, we decline to restrain CTU to encash the bank guarantee. CTU shall be at liberty to take necessary action to cancel the LTA granted to the petitioner and encash the bank guarantee in terms of the Connectivity Regulations and Detailed Procedure. The petitioner is pursuing the legal remedy before the High Court of Madras with regard to CRZ and CFE clearance. The present status of the writ petition before the High Court has not been placed on record. If the petitioner succeeds and executes its

power project and applies for LTA to CTU, the encashed bank guarantee shall be adjusted against the bank guarantee required for applying for LTA.

(c) In the third prayer, the petitioner had prayed for a stay on the CTU's communication dated 5.3.2015 and all proceedings pursuant ad consequent thereto pending disposal of the petition. In the fourth prayer, the petitioner has sought ex parte an ad interim order in terms of the third prayer. No ad interim order has been issued in the petition. However, during the pendency of the petition, CTU has not taken any coercive measure against the petitioner. Since the petition is being finally disposed of, no direction is required to be issued in respect of the said prayers.

26. During the course of the proceedings of the present petition, CTU had placed on record a list of eleven generation project developers who have not signed the LTA Agreement. CTU has issued notices to all the project developers for entering into LTA Agreement failing which their LTA will be cancelled and bank guarantee will be forfeited. CTU has sought guidance of the Commission for dealing with those cases. We direct CTU to deal with those cases in the light of directions in this order.

27. Petition No.106/MP/2015 of disposed of in terms of the above.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson