

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**I.A. No. 17/2016
in
Petition No. 188/MP/2015**

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

Date of Hearing: 28.7.2016

Date of Order: 02.8.2016

In the matter of

Petition under Section 79 (1) (f) and (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.

And

In the matter of

Sarda Energy and Minerals Ltd.
73 A, Central Svenue, Nagpur,
Maharashtra-440 018

Petitioner

Vs.

Power Grid Corporation of India Ltd.
B-9, Qutub Institutional Area,
Katwaria Sarai, New Delhi-11 016

Respondent

The following were present:

Shri J.K.Chaudhary, Advocate for the petitioner
Shri Arvind Singh, SEML
Shri Sitesh Mukherjee, Advocate, PGCIL
ShriGautam Chawla, Advocate, PGCIL



ORDER

The petitioner, Sarda Energy and Minerals Ltd, has filed the petition seeking a direction to restrain the respondent, PGCIL, invoking construction Bank Guarantee of ₹ 7.8 crore. After hearing the learned counsel for the petitioner and the respondent, order was reserved in the petition. Subsequently, the petitioner filed an IA No. 26/2015 in Petition No. 188/MP/2015 stating that without waiting for the order of the Commission, CTU has encashed the Bank Guarantee (BG) on 9.9.2015 and sought a direction to PGCIL not to appropriate the proceeds of the BG or to deposit the proceeds thereof in the bank account of the petitioner. The Commission vide order dated 17.9.2015 directed as under:

“We have considered the submission of the learned counsel for the petitioner. We direct that the respondent shall keep the amount of encashed Bank Guarantee in a separate account till the order is issued in the petition. If the petition is decided in favour of the petitioner, the respondent shall return the Bank Guarantee amount within one week of the issue of the order.”

2. The petitioner through the IA No. 17/2016 has submitted that the encashed amount of BG directed to be deposited in separate account, may not be earning any reasonable interest. Whereas the petitioner is constrained to avail financial assistance at huge prevailing commercial cost. Therefore, while on the one hand the encashed amount of BG is losing even reasonable commercial interest, the petitioner on the other hand is compelled to make outlay of huge cost for availing financial assistance. Therefore, release of encashed amount of BG in favour of the petitioner would not only provide certain relief to the cash crunched position of the petitioner, but also conserve the amount of interest being lost on the encashed amount of BG. The petitioner has requested to direct PGCIL to release the BG amount which has been kept in a separate



account after the Commission`s direction dated 17.9.2015 in favour of the petitioner on furnishing the BG of the said amount to secure such released amount.

3. Learned counsel for the petitioner submitted that as per information available from PGCIL through RTI, no work for setting up of infrastructure/construction or otherwise has been initiated or completed by PGCIL at Tamnar Block in Raigarh. With regard to expenses incurred by PGCIL, no expenses were incurred on account of petitioner`s LTAA, in connection with Raigarh Pooling station. Therefore, there was no justifiable reason on the part of PGCIL to invoke the bank guarantee furnished by the petitioner. Learned counsel for the petitioner submitted that the petitioner undertakes to furnish a bank guarantee of equal amount of Rs. 7.80 crore against such release of encashed amount of BG towards securing the released amount which would amply secure PGCIL in so far as its interest is concerned.

4. Learned counsel for PGCIL submitted that in the present petition, the petitioner has sought stay on the encashment of BG on the ground of force majeure events. Learned counsel for PGCIL submitted that the issue of force majeure event has not been argued so far and requested for time to file its reply on the issue as to whether non-availability of land is a force majeure event as per the Long Term Transmission Agreement.

5. We have considered the submissions of the learned counsels for the petitioner and the respondent. From the submission of the learned counsels for the petitioner and the respondent, it appears that both parties interested to argue on the issue whether the petitioner is affected by force majeure or not. Accordingly, we direct the respondent to file its reply by 12.8.2016 on the issue of force majeure with an advance copy to the

petitioner who may file its rejoinder, if any on or before 20.8.2016. The petition shall be listed for hearing on 30.8.2016.

6. As regards the prayer in the IA, we are not inclined to issue any direction to PGCIL to refund the BG amount to the petitioner against issue of a BG for like amount in favour of PGCIL. The parties are directed to maintain *status quo*. It is clarified that if the petition is decided in favour of the petitioner, the respondent shall return the Bank Guarantee amount with interest earned thereon within one week of the issue of the order.

7. I.A is disposed of in terms of the above.

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

sd/-
(A.S.Bakshi)
Member

sd/-
(A.K.Singhal)
Member

sd/-
(Gireesh B.Pradhan)
Chairperson