

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 122/MP/2017

- Subject : Petition for relinquishment of 250 MW of Long Term Access Agreement dated 4.12.2011 under Regulation 18 read with Regulation 32 of Central Electricity Regulatory Commission (Grant of Connectivity, Long-Term Access and Medium Term Open Access in inter-State Transmission system and related matters) Regulations, 2009 (Connectivity Regulations) of the identified transmission system by the Essar Power Gujarat Limited (4X660 Phase-II) Thermal Power Plant at District Jamnagar in the State of Gujarat.
- Date of hearing : 13.7.2017
- Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
- Petitioner : Essar Power Gujarat Limited (EPGL).
- Respondents : Power Grid Corporation of India Limited & Others.
- Parties present : Shri Buddy Ranganadhan, Advocate, EPGL
Shri Rohan Kaushal, Advocate, EPGL
Ms. Sumanta Nayak, Advocate, EPGL
Shri Aslam Ahmad, Advocate, EPGL
Shri Nirnay Gupta, EPGL
Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL

Record of Proceedings

Learned counsel for the petitioner submitted that the present petition has been filed for seeking declaration that the LTA has become void/ frustrated in view of provisions of Section 56 and Section 32 of the Indian Contract Act, 1872 and force majeure conditions and that the petitioner is entitled to relinquish its access rights to the extent of 250 MW without any liability for payment of relinquishment charges under Regulation 18 of the Connectivity Regulations. Learned counsel further submitted as under:

- a). The petitioner is setting up a 4440 MW thermal Power Plant at District Devbhumi Dwarka, Gujarat comprising of three phases; Phase-I comprising of 2 units of 600 MW each has been commissioned since June 2012, having a contracted capacity of 1000 MW vide PPA with Gujarat Urja Vikas Nigam Limited (GUVNL) whereas Phase-II comprising of 4 units of 660 MW each in two stages of 1320 MW each with contracted capacity of 800 MW to GUVNL and Phase-III comprising of 4 units of 150 MW each with no power tied as on date.
- b). On 3.3.2011, the petitioner applied to PGCIL for grant of 250 MW LTA for transfer of power to the target region and the same was granted to the petitioner subject to signing of Bulk Power Transmission Agreement and fulfillment of other conditions. On 14.12.2011, the petitioner and PGCIL executed the LTA Agreement.
- c). Environment Clearance (EC) for the Phase I of the generation project along with 20 km coal-cum-water corridor was sought in 2007 and the same was received on 17.7.2009. The Ministry of Environment and Forest (MoEF) although gave clearance for generation project but subjected the same to fulfillment of certain other conditions corresponding to the Jetty Land for the purpose of the Sea Water pipeline and Coal conveyor corridor.
- d). MoEF vide Office Memorandum dated 2.12.2009 stipulated a special condition for granting environmental clearance to projects involving forest land, wildlife habitat and or located within 10 kms from National Park/Wildlife sanctuary that the environmental clearance shall be subject to obtaining prior clearance from forestry and wildlife including clearance from Standing Committee of the National Board for Wildlife (NBW).
- e). The petitioner had planned to have its Phase II generation project commissioning of Unit I in December 2013. The petitioner applied for Terms of Reference (TOR) to MoEF on 14.1.2010. The application for TOR was considered by MoEF in its 69th meeting wherein it was decided that the petitioner should first submit the compliance of conditions in EC of Phase-I dated 17.7.2009 qua approval from NBW, and only thereafter the proposal for expansion would be considered.
- f). The petitioner apprised PGCIL of the various delays in commissioning of the generation project due to the delay in approvals and clearances and other factors from time to time via various communications and meetings and requested for keeping LTA in abeyance till further confirmation by the petitioner.
- g). PGCIL for the reasons best known to itself chose to ignore the caution notice of the petitioner given in August 2012 and July 2013 and decided to continue the construction of the transmission project by summarily rejecting the claims of force majeure by the petitioner. PGCIL has acted in an inefficient manner by continuing construction activities even after knowing that the linked generation project was getting delayed for the reasons beyond the control of the petitioner.

h). The force majeure events continued upto 2016 and therefore, the petitioner vide letter dated 9.6.2016 to PGCIL sought relinquishment of 250 MW of LTA granted to the petitioner on ground of impossibility to perform its obligations under the contract, without implicating any financial liability towards the relinquishment of the same. In response, PGCIL informed the petitioner that LTA can be relinquished subject to payment of relinquishment charges in terms of the Connectivity Regulations.

i). The Salaya II project could not be commenced because the approval of the environment clearance could not be obtained for the events beyond the control of the petitioner which in turn has frustrated the LTA. The LTA is frustrated qua the petitioner and therefore, the petitioner ought to be discharged of its obligations to pay any charges under the LTA.

2. Learned counsel appearing for PGCIL accepted the notice. Learned counsel submitted that there are other petitions pending before the Commission which have relevance to the issues raised in the petition and these petitions may also be tagged.

3. After hearing the learned counsel for the petitioner, the Commission admitted the petition and directed to issue notice to the respondents.

4. The Commission directed the petitioner to serve the copy of the petition on the respondents immediately, if not served already. The respondents were directed to file their replies, on affidavit, by 27.7.2017 with an advance copy to the petitioner, who may file its rejoinder by 10.8.2017. The Commission directed that due date of filing replies and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. The petition shall be listed for hearing on 29.8.2017.

By order of the Commission

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