

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 211/MP/2016
Alongwith I.A. No. 21 of 2017**

Subject : Petition under Section 19 of the Electricity Act, 2003 read with Regulation 14 and Regulation 7 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2009 seeking revocation of the inter-State Trading licence granted to M/s Global Energy Private Limited.

Petitioner : Jindal Power Limited.

Respondent : Global Energy Private Limited

Date of hearing : 27.4.2017

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

Parties present : Shri S. Venkatesh, Advocate, JPL
ShriPratyush Singh, Advocate, JPL
ShriShreshth Sharma, Advocate, JPL
ShriAnshuman Sharma, Advocate, JPL
Shri M.G. Ramachandran, Advocate, JPL
Ms.AnushreeBardhan, Advocate, JPL
ShriShwaranjan, JPL
ShriS.Ganesh, Senior Advocate, GEPL
ShriMatrugupta, Advocate, GEPL
ShriHemant Singh, GEPL

Record of Proceedings

Learned senior counsel for Global Energy Private Limited(GEPL) submitted that the present Interlocutory Application has been filed by GEPL seeking dismissal of the present petition and for raising a question of law as to whether in a purely commercial dispute, a licence can be revoked. Learned senior counsel further submitted as under:

a). The present petition is an abuse of the process of law and is filed to claim illegal monies by the petitioner. GEPL has not defaulted in making any payments to the petitioner. Rather it is the petitioner which has to compensate GEPL for wrongfully terminating the LOI dated 18.8.2015.

- b). A commercial dispute which is pending in an appropriate forum cannot be the basis of initiation of revocation of licence proceedings. This will lead to prejudging a dispute pending before a civil court, which is not legally permissible.
- c). GEPL has already made a payment of Rs. 12 crore in view of the settlement/LOI dated 18.8.2015 which merged all the pending disputes between the petitioner and GEPL. Thus, GEPL, now cannot have any claim in view of the payments already made under the terms as agreed upon by both the parties.
- d). There is a dispute with respect to the illegal actions of the petitioner in seeking to terminate the LOI dated 18.8.2015 executed between the petitioner and GEPL. The said illegal termination and the cessation of power supply by the petitioner resulted in GEPL suffering losses of around Rs. 18.33 crore on account of arranging alternate source of power for onward supply to its HT consumers in the State of Maharashtra.
- e). GEPL filed a suit for Declaration and Permanent Injunction being CS(OS) 2964 of 2015 before the Delhi High Court to restrain the petitioner from invoking the Bank Guarantee furnished by GEPL. The said suit was dismissed by the Delhi High Court vide order dated 28.9.2015 stating that the suit is not maintainable as the jurisdiction to adjudicate upon a dispute between licensee and generator vests with the Commission.
- f). Thereafter, GEPL filed an appeal against the order dated 28.9.2015. The said appeal was allowed by the Delhi High Court vide order dated 6.10.2015 and the said matter was remanded back to the Ld. Single Judge with directions to adjudicate on the matter again including on the issue of jurisdiction. Presently, the civil suit filed by GEPL bearing No. CS (Comm) 174 of 2016 (restoration of CS(OS) 2964 of 2015) is pending before the Delhi High Court. The entire foundation of the present petition for revocation of licence is the petitioner's defence in the High Court, which cannot form the basis of any revocation of licence. Having taken that defence, and when the matter is sub-judice, the defendant in the civil suit cannot now ask this Commission to rule on the subject.
- g). There are also certain proceedings relating to Section 138 of the Negotiable Instruments Act, 1881 initiated by the petitioner before the District Courts at Patiala House, Delhi. Through the present petition, GEPL cannot be compelled to disclose its defence in the collateral proceedings.
- h). The petitioner, vide affidavit dated 3.4.2017, has placed on record the order dated 21.3.2017 of the Delhi High Court in I.A. No. 2487/2016 wherein the High Court has only limited its observation with respect to the jurisdiction of the other authorities. The issue is not about jurisdiction of the Commission but is that the main prayer of the petitioner is to seek revocation/suspension of the inter-State trading license of GEPL on account of non- payment of money, which is pending before the Delhi High Court and unless there is an adjudication that GEPL owes money and has committed a fraud, the relief claimed in the present petition cannot be granted.
- i). The issues involved in the present case and in the civil suit are same which are pending for adjudication. Since the civil suit filed before the Hon'ble Delhi High Court has been instituted prior to the present petition, the present petition is liable to be

dismissed. This is also a judicial discipline as espoused in Section 10 of the Code of Civil Procedure. It is a settled principle of law that CPC is a codification of civil jurisprudence and its principles are applicable to all civil proceedings unless there is some rule/regulation/law to the contrary.

j). The petition cannot be adjudicated without awaiting the outcome of the proceedings before the Delhi High Court as the said proceedings have a telling effect on the present proceedings, which evidences that the subject matter in both the above proceedings is directly and substantially the same.

2. In its rebuttal, learned counsel for the petitioner submitted as under:

a). The present petition has been filed by the petitioner for revocation of the inter-State trading licence granted to GEPL under Section 19 of the Electricity Act, 2003 (the Act) read with Regulations 14 and 7 of the Central electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009 which as a subject matter falls within the exclusive jurisdiction of the Commission.

b). GEPL filed a suit for Declaration and Permanent Injunction before the Delhi High Court to restrain the petitioner from invoking the Bank Guarantee furnished by GEPL. Thereafter, GEPL filed an application for amendment of its suit. By way of its amendment application, GEPL was seeking enlargement of the scope by entirely changing the nature of the suit which was originally a suit for declaration and permanent Injunction to a suit for damages.

c). The relief sought by the petitioner in the present petition is independent of the relief being sought by the respondent in the Civil Suit pending before the Hon'ble Delhi High Court which can only be granted by the Commission under its statutory Power conferred upon it under the Act.

d). The Delhi High Court vide its order dated 21.3.2017 held that the pendency of the Civil Suit filed by GEPL does not restrict the Commission to act within its jurisdiction. Therefore, all ambiguity concerning the maintainability of the present petition has been cleared.

3. After hearing the learned counsels for the parties, the Commission directed the parties to file their written submissions with an advance copy to each other by 25.5.2017 failing which the order shall be passed based on the documents available on record.

4. Subject to the above, the Commission reserved the order on the maintainability of the petition.

By order of the Commission

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