

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.190/MP/2016  
With I.A. No. 62 of 2016**

**Coram:  
Shri P.K. Pujari, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of Order: 31<sup>st</sup> of May, 2018**

**In the matter of**

Petition under Section 79 (1) (c) & (f) of the Electricity Act, 2003, read with Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in Inter-State Transmission and related matters) Regulations, 2009, seeking directions in respect of LTA to be granted for Budhil Hydro Electric Project in terms thereof.

**And  
In the matter of**

Greenko Budhil Hydro Power Pvt. Ltd.  
Plot No. 1367, Road No. 45,  
Jubilee Hills, Hyderabad

**...Petitioner**

**Vs.**

1. Power Grid Corporation of India,  
B-9, Qutab Institutional Area,  
Katawaria Sarai, New Delhi-110016
2. PTC India Limited,  
2<sup>nd</sup> Floor, NBCC Tower15,  
Bhikaji Kama Place,  
New Delhi-110066

**...Respondents**

**ORDER**

The Petitioner, Greenko Budhil Hydro Power Private Ltd. (GBHPPL), has filed the present petition under Section 79 (1)(c) and (f) of the Electricity Act, 2003



(hereinafter referred to as 'the Act') read with the Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium Term Open Access in inter-State Transmission and related matters) Regulations, 2009 (hereinafter the "Connectivity Regulations") for seeking direction to Power Grid Corporation of India Limited (hereinafter referred to as "CTU") to modify the existing BPTA for change in the drawee entity and drawl location and seeking a declaration that Petitioner is not liable to pay the transmission charges as claimed by CTU.

### **Brief Facts of the Case**

2. Lanco Green Power Private Limited (LGPPL) developed Budhil Hydro Power Project (2X35 MW) in the State of Himachal Pradesh on Develop, Build, Own, Operate and Maintain (DBOOM) basis. The name of the company was changed to M/s Lanco Budhil Hydro Power Pvt. Ltd (LBHPPL) on 6.8.2010. The name of the company was further changed to M/s Greenko Budhil Hydro Power Pvt. Ltd. (GBHPPL) on 20.11.2014. In this order, the Petitioner refers to LGPPL, LBHPPL and GBHPPL.

3. On 30.3.2005, the Petitioner entered into a long term Power Purchase Agreement with PTC India Limited (hereinafter "PTC PPA") for a period of 35 years from the date of commercial operation of the generating station for supply of entire saleable power and energy. PTC entered into a Power Sale Agreement dated 21.9.2006 with Haryana Power Generation Corporation Limited (HPGCL). For the purpose of transfer of power from the Petitioner's project to Haryana State, PTC obtained Long Term Open Access (LTA) from CTU in the year 2005. The Petitioner



and PTC signed a Bulk Power Transmission Agreement (BPTA) dated 18.10.2007 with CTU. As per the BPTA, PTC is the Injection Utility with injection point as the Chamera Pooling station and the Drawee Utility is the Haryana Power Generation Corporation Limited with drawal at all points where inter-connection between HPGCL and PGCIL systems exist. The capacity covered under the LTA was 61.6 MW for the first 12 years and 57.4 MW thereafter (after excluding the free power of 12%/18% as the case may be). The BPTA defines PTC as the Long Term Transmission Customer (LTTC) which is liable to pay the transmission charges for the Chamera Pooling station from its date of commercial operation till the pooling station becomes a part of regional transmission system and the regional transmission charges corresponding to 88% of the generation capacity of the project for the first 12 years and 82% of the generation capacity thereafter.

4. On 18.12.2009, the Petitioner terminated the PTC PPA dated 30.3.2005 citing certain force majeure events. Consequently, HPGCL challenged the termination of PTC PPA before Haryana State Regulatory Commission (HERC). HERC vide its order dated 25.8.2011 held that it has jurisdiction to adjudicate the dispute with regard to termination of PPA. Aggrieved by HERC's order dated 25.8.2011, the Petitioner filed Appeal No. 188 of 2011 before the Appellate Tribunal for Electricity (Appellate Tribunal). The Appellate Tribunal vide its order dated 9.8.2012 held that HERC does not have jurisdiction over the matter as there is no nexus between PTC PPA and PSA and set aside the order of HERC. Aggrieved by the order of Appellate Tribunal, both Haryana and PTC filed Civil Appeals No. 9218/2012 and 1054/2013 respectively before the Hon`ble Supreme Court which are pending. In the



meanwhile, PTC filed Petition No.253/MP/2012 before this Commission for adjudication of the matter related to the termination of the PPA by LGPPL. The Commission vide order dated 28.10.2013 disposed of the said petition stating that PTC may decide its future course of action in the light of the decision of the Supreme Court and shall be at liberty to approach the Commission in accordance with law in case the Supreme Court rules in favour of the jurisdiction of the Commission.

5. Prior to the commissioning of the project, the Petitioner applied for and was granted connectivity for connecting the power project to the ISTS through the transmission system of NHPC Limited. The Petitioner entered into a Connection Agreement dated 30.3.2012 with CTU and NHPC Limited. On 25.4.2012, a meeting was held in the chamber of Member (PS), CEA in the presence of the representatives from POSOCO, CTU, NRLDC, HPSLDC, LBHPPL and PTC regarding the commissioning of the power project. The following decisions were taken in the said meeting:

“9. Conclusion:

1. LancoBudhil HEP will be a regional entity under the control area of NRLDC until such time the dedicated line to Chamera III is taken over by HPPTCL. After this control Area would shift to HPSLDC as Budhil HEP would be connected only to State Network.
2. LancoBudhil HEP will immediately complete the the formalities for getting registered as a regional entity and thereafter shall be allowed to charge their dedicated line, synchronise and commission their plant.
3. LancoBudhil HEP was agreeable to reimburse long term access charges during the interim period as stated in para 6 above which will be billed by Powergrid to PTC in order to neutralise the liability of PTC on account of LTA.



4. Lanco Budhil HEP would approach the CERC with the minutes of this meeting within one week upon receipt of this minute of meeting with the requisite information about their project for kind information of the Commission and issuance of directions if any. NRLDC, CTU, PTC, HP STU and HP SLDC would be made the respondents.
5. Lanco Budhil HEP was agreeable to bear any liability out of the orders of HERC, CERC or APTEL. Lanco Budhil HEP agreed to indemnify CEA, NRLDC and Powergrid at all times from all damages, losses, claims, actions and any other legal or commercial liabilities.”
6. Pursuant to the said decision, the Petitioner filed an application on 3.5.2012 in the registry of the Commission. In para 5 of the application, it was stated that “Now, in the light of the point (d) above, Lanco Budhil is filing this application before this Hon’ble Commission for bringing the Minutes of Meeting on record for kind information and issuance of directions, if any.” The Application was neither accompanied by an affidavit nor the applicable fees. Hence, the application was not registered as a petition. The Petitioner also did not pursue the matter.
7. The Petitioner completed the registration with NRLDC as a regional entity. The Petitioner commissioned both units of the generating station on 30.5.2012. Since, the Petitioner did not have long term PPA for sale of power from Budhil HEP, it sold the power on short term basis by obtaining short term open access from NRLDC. In terms of the MoM dated 25.4.2012, the Petitioner paid the long term access charges from April, 2014 till February, 2016 in addition to the short term open access charges. After February, 2016, the Petitioner stopped paying the LTA charges.
8. The Petitioner entered into a PPA with Uttarakhand Power Corporation Limited (UPCL) for long term supply of power from the generating station to



Uttarakhand. The Petitioner made an application to CTU on 15.3.2016 for change of the Drawee Utility to UPCL and drawal location to all the points where the inter-connection between Uttarakhand State network and PGCIL System exist in the BPTA dated 18.10.2007. CTU vide its letter dated 11.4.2016 sought the comments of PTC on the request of the Petitioner for change of drawee utility and change of drawal location, and since PTC was the original LTA grantee, CTU advised PTC to make a formal request from its side in this regard. PTC in its letter dated 18.4.2016 while recounting the history of litigations in the matter informed CTU as under:

“10. In view of the foregoing, since the matter is sub-judice and is pending adjudication in the Supreme Court as explained in para 6 above, it is requested that the subject LTOA granted to PTC for the Budhil Hydroelectric Project may be changed in the name of Lanco Budhil (now Greenco Budhil Hydro Power Pvt. Ltd.) without any liability on PTC, till such time the matter attain finality in the competent court of law.”

9. The Petitioner vide its letter dated 17.5.2016 requested CTU to change the drawee utility and drawal point as per its earlier request dated 15.3.2016 and agreed to indemnify CTU, NRLDC or NLDC at all times from all damages, losses, claims, and any other legal or commercial liabilities arising out of the order of CERC, APTEL or the Hon'ble Supreme Court with respect to the requested change of drawal utility and drawal location. CTU vide its letter dated 14.6.2016 replied to the Petitioner that its request cannot be acceded to under the extant regulations of the Commission. Further, CTU advised the Petitioner in the said letter as under:

“Under such a situation, it would not be prudent to take any action towards LTA, which is primarily based on the PPA in question. However, it may be advised that till the dispute is resolved M/s Greenco Budhil may avail MTOA for a maximum period of 3 years which may be followed by subsequent MTOAs if necessary.”



10. CTU has been raising the bills for transmission charges on the Petitioner which the Petitioner has stopped paying with effect from March 2016. Aggrieved by the refusal of CTU to accede to the request of the Petitioner to change the drawal utility and drawal location and apprehending coercive action from CTU for non-payment of LTA charges, the Petitioner has filed the present petition with the following prayers:

- “(a) Direct the Respondent No.2 to surrender its long-term access rights from Budhil Hydro Electric Plant (BHEP) to the Haryana State;
- (b) Direct Respondent No.1 to permit change of drawee as requested by the petitioner vide its letter dated 15.3.2016;
- (c) Or in the alternative, direct the Respondent No.1 to accept fresh application from the petitioner for long term access without any demand for payments under the BPTA dated 18.10.2007.
- (d) Declare that the petitioner is not liable to pay the amounts under BPTA in terms BPTA dated 18.10.2007 from May, 2012 onwards;
- (e) Restrain CTU from taking any coercive steps for recovery of LTA charges from the petitioner in terms of invoices as per Annexure K, L;
- (f) Direct CTU to return the amount of Rs. 23,99,95,492 (April 2014 to February 2016) with interest illegally collected from the petitioner;
- (g) Pass interim orders in terms of prayer (c) above during the pendency of the present petition.”

11. The Petitioner has filed an Interlocutory Application (IA) No. 62 of 2016 seeking stay of operation of the letters dated 7.11.2016, 9.11.2016 and 19.11.2016 issued by CTU till the pendency of the present proceedings and directions to restrain CTU from taking any coercive actions against the Petitioner in terms of the said letters dated 7.11.2016, 9.11.2016 and 19.11.2016 till the pendency of the petition. The Petitioner in the IA has reiterated the submissions made in the Petition.



## **Case of the Petitioner**

12. The Petitioner has submitted that both units of Budhil Plant were commissioned on 30.5.2012. In the absence of LTA, the Petitioner started selling its power on short term basis by obtaining Short Term Open Access (STOA). The Petitioner was paying the STOA charges in addition to the payment of transmission charges for LTA in respect of transmission system under BPTA dated 18.10.2007. From the COD onwards and up to February 2016, the Petitioner has paid LTA charges of Rs. 23.99 crore to CTU. The Petitioner after entering into long term PPA with UPCL requested CTU to change the Drawee Utility from HPGCL to UPCL and drawal location to all points where inter-connection between UPCL and CTU system exist. However, CTU vide its letter dated 14.6.2016 has refused the Petitioner's request and advised the Petitioner to avail MTOA for a maximum period of three years which may be followed by subsequent MTOAs, if necessary. The Petitioner has submitted that for all practical purposes, PTC has relinquished the access rights and it is incumbent on CTU to follow up with the necessary statutory requirement mandated by the Act and Regulations to ensure that the transmission capacity on account of relinquishment is utilised. The Petitioner has submitted that the first proviso to Regulation 15A of the Connectivity Regulations deal with the consequence of the termination of the PPA which provides that in case of the non-utilisation of the long term access for a period exceeding one year, CTU is mandated to ask the long term customer to surrender the long term access. The Petitioner has submitted that in the present case, CTU has not carried out its statutory obligations by not asking PTC to surrender its LTA for extraneous reasons, such as pendency of





the litigation proceedings between the parties to the PPA. The Petitioner has submitted that even though the matter regarding jurisdiction of HERC is pending before Hon'ble Supreme Court, notice terminating the PPA has come into effect and all parties are bound by the same, subject to the final outcome of the case before the Hon'ble Supreme Court. The Petitioner has submitted that in all fairness, PTC should have surrendered the LTA in 2011 when it could not obtain stay on the termination of PPA from the Hon'ble Supreme Court. Even though in the all party meeting dated 25.4.2012, PTC agreed to surrender the LTA, it did not do so. However, CTU has not asked PTC to surrender its LTA despite its statutory obligations to do so.

13. The Petitioner has submitted that PTC in its letter dated 18.4.2016 took the stand that without prejudice to the issue of legality of the termination of the PPA which is *sub-judice* before the Hon'ble Supreme Court, the subject LTA can be changed in the name of the Petitioner. The Petitioner has submitted that CTU has failed to appreciate that the issue of termination of PPA and obligations under the BPTA are intricately independent and termination of PPA on force majeure reasons would make the BPTA frustrated. The Petitioner has submitted that neither the Petitioner nor PTC would have any liability to pay the LTA charges to CTU as has been claimed and paid to CTU either under mistake of fact or law. The Petitioner has submitted that since the PPA is not in existence and the obligations under the PPA have been extinguished due to force majeure events, even BPTA stands terminated and rights and obligations under the BPTA also stand extinguished. Accordingly, the Petitioner has no obligations to pay the LTA charges. The Petitioner has also submitted that CTU refused the request of the Petitioner to submit a fresh application



for LTA with UPCL as a drawee utility stating that until and unless PTC surrenders LTA as agreed in the minutes dated 25.4.2012, fresh application from the Petitioner cannot be accepted. This is contrary to the extant regulations.

### **Proceedings before the Commission**

14. Notices were issued to the respondents to file their replies. The Petitioner was directed to place on record the copy of the Civil Appeals filed by PTC and HPGCL before the Supreme Court on jurisdiction. The Petitioner has filed the copy of the same on record.

15. During the hearing of the petition on 14.12.2016, learned counsel for the Petitioner reiterated the submissions made in the petition. Learned counsel for CTU submitted that the dispute pending before the Hon'ble Supreme Court has relevance to the issue of grant of LTA to the Petitioner on alternative drawee entity and therefore, CTU cannot take a view that the dispute before the Supreme Court is alien to the request of the Petitioner for delivery of power to Uttarakhand. Learned counsel for CTU submitted that back-to-back PPAs between the Petitioner and PTC, and between PTC and HPGCL are a part of one transaction and are directly relevant to the LTA granted to PTC for delivery of power from Greenko to Haryana. Learned counsel further submitted that since PTC is the long term customer, CTU could not have proceeded on the Petitioner's request for change in drawee entity. Learned counsel submitted that if the Petitioner is interested in supply of power to UPCL, it can make application to CTU which will be considered after following the due process. Learned senior counsel for the Petitioner submitted that since CTU was



willing to accept the application for LTA by the Petitioner for supply of power to UPCL, the Petitioner agrees to make an application to that effect. Learned counsel for PTC submitted that CTU for reasons best known to it, has not accepted the Petitioner's request for change of drawee entity. The PPA signed between PTC and Haryana is in dispute and thus is in abeyance. Therefore, the LTA should also be kept in abeyance and PTC should not be made to pay transmission charges for the LTA granted.

16. The Commission observed in the Record of Proceedings that since CTU's submission during the hearing to consider the application for LTA, if made by the Petitioner, is at variance with its stand taken in the letter dated 14.6.2016, CTU should file its submission on affidavit by 30.12.2016. CTU has filed its response vide affidavit dated 30.12.2016. CTU has submitted that CTU stands by the letter dated 14.6.2016 wherein MTOA route was suggested to the Petitioner in view of the pendency of the matter before the Hon'ble Supreme Court.

17. PTC in its reply dated 9.3.2017 has submitted that aggrieved by the Appellate Tribunal's order dated 9.8.2012 in Appeal No.188 of 2011, HERC has filed Civil Appeal No. 9218/2012 and PTC has filed Appeal No.1054/2013 before the Hon'ble Supreme Court which are pending. PTC has further submitted that in the meeting dated 25.4.2012 held under the aegis of Member (PS) CEA, the Petitioner agreed for change of subject LTA in the name of the Petitioner from Respondent No.2. PTC has submitted that it came to its knowledge that on 26.12.2016, Uttarakhand Electricity Regulatory Commission (UERC) has approved the draft PPA between the Petitioner



and UPCL for purchase of 70 MW capacity from Budhil HEP on long term basis. PTC has submitted that it wrote a letter dated 4.1.2017 to UPCL with copy to UERC requesting to restrain from signing the PPA with the Petitioner. PTC has further submitted that HPGCL vide its letter dated 2.1.2017 informed UPCL with copy to UERC that HPGCL has entered into the PPA with PTC for full capacity for 35 years and the matter is *sub-judice* before the Hon`ble Supreme Court and requested UPCL to revisit the matter of signing of the PPA with the Petitioner. PTC has submitted that the issue of termination of PPA is *sub-judice* and till the matter is finally decided by the Supreme Court, there cannot be a final adjudication with respect to supply of power. PTC has further submitted that it has no objection for transfer of LTA in the name of the Petitioner during the pendency of the case before the Hon`ble Supreme Court, subject to the condition that there is no liability on the Respondent No.2.

18. The Petitioner in its rejoinder dated 8.4.2017 to the reply filed by PTC has submitted that Hon`ble Supreme Court has not passed any interim directions for staying the judgement of the Appellate Tribunal and therefore, the act of termination of PPA has attained finality, subject to the liberty granted by the Commission in order dated 28.10.2013 in Petition No.253/MP/2012. The Petitioner has further submitted that in terms of Section 38 of the Act, CTU is under an obligation to grant non-discriminatory open access in the ISTS. Once the application is made, CTU cannot withhold the grant of long term access to the Petitioner on the pretext of pending litigations before the Hon`ble Supreme Court. The Petitioner has submitted that the LTA pertaining to HPGCL continues in the name of Respondent No.2 and has nothing to do with the Petitioner. The Petitioner has submitted that the name of the



Petitioner is only mentioned in the context of a source of power which can be replaced by another source by PTC being an electricity trader and hence, there is no impediment for CTU to grant fresh open access to the Petitioner for supply of power.

19. CTU vide its affidavit dated 13.4.2017 brought on record the efforts made by CTU in resolving the dispute. CTU has submitted that it convened a meeting dated 5.4.2017 with participation of the Petitioner and CTU to review the non-payment of dues towards the transmission charges by the Petitioner and the issues involved in the transfer of LTA from PTC to the Petitioner. CTU explained in the said meeting that copies of the bills towards transmission charges for the LTA are now being sent to the Petitioner and PTC jointly and severally towards making payments of the transmission charges every month and the Petitioner/PTC are liable to pay the LTA transmission charges as per the MoM dated 25.4.2012. As regards the surrender of LTA by PTC to facilitate grant of LTA to the Petitioner, it was informed by PTC that since the termination of the PPA by the Petitioner is presently sub-judice before Hon'ble Supreme Court and surrender of LTA involves financial liability at the end of PTC in the form of relinquishment charges and the quantum of relinquishment charges is uncertain, PTC could not arrive at a decision in the matter. CTU suggested to the Petitioner to apply for MTOA if PTC does not surrender LTA till the dispute between the Petitioner and PTC is resolved. CTU further requested the Petitioner to pay the transmission charges pending since March 2016 and submit the MTOA application immediately. CTU further requested the Petitioner and PTC to pay the transmission charges failing which action for curtailment of STOA would be taken.



20. The Petitioner in its rejoinder to the affidavit of CTU dated 13.4.2017 has submitted that in the hearing dated 14.12.2016, CTU through its counsel expressly stated that it was willing to consider a fresh application on behalf of the Petitioner provided that the said Petitioner furnished an undertaking with respect to indemnification of PGCIL based on any decision which may be taken by the Hon'ble Supreme Court. The Petitioner has submitted that the indemnification has already been given by the Petitioner vide its letter dated 17.5.2016. Further, the Petitioner on 27.3.2017 applied to PGCIL for grant of a fresh LTA for supply of power to UPCL on a long term basis. The Petitioner has submitted that post this development, CTU is obliged to call a meeting for the purpose of grant of fresh LTA to the Petitioner. The Petitioner has submitted that though CTU called a meeting on 5.4.2017, CTU instead of discussing the way forward for grant of LTA to the Petitioner, went ahead and offered MTOA to the Petitioner until the issue regarding termination of PTC PPA is decided by the Supreme Court. The Petitioner has submitted that the conduct of CTU was contrary to its express undertaking before this Commission during the hearing on 14.12.2016. The Petitioner has submitted that its case does not fall under Regulation 15B of Connectivity Regulations introduced through an amendment dated 17.2.2017 where an applicant is granted MTOA as an interim measure and switches over to LTA after the requisite capacity is available without any liability to pay any relinquishment charges. The Petitioner has submitted that the Petitioner cannot be asked to avail MTOA when there is adequate ATC available in the transmission corridor for grant and operationalization of LTA. The Petitioner has submitted that as per the BPTA dated 18.10.2007 and the minutes of the meeting



dated 25.4.2012, the liability to pay the transmission charges has always been that of PTC. The Petitioner has submitted that the application filed by the Petitioner on 30.5.2012 is pending before the Commission. The Petitioner had only agreed to reimburse to PTC the transmission charges as an interim measure till the Petitioner identifies a new beneficiary and therefore, the Petitioner is no more liable to pay the transmission charges qua the PTC PPA on account of the fact that the Petitioner has identified a new beneficiary in the Northern Region, namely, UPCL. The Petitioner has submitted that the LTA qua supply of power to HPGCL is in the name of PTC and as such the Petitioner cannot be made liable to pay any transmission charges qua the said LTA.

21. Subsequently, the IA for direction to PTC to surrender the LTA and to CTU for directions to modify the existing BPTA for a change in the drawee and drawal locations were heard on 16.2.2017 and 16.5.2017 wherein the counsel for the parties reiterated the submissions as recorded in paras 17 to 20 above. The parties were directed to file their written submissions. The Petitioner, PTC and CTU have filed their written submissions. The written submissions are in line with the submissions already made and hence are not repeated for the sake of brevity. CTU in its written submission has stated that the outstanding dues of transmission charges has exceeded 60 days and therefore, CTU may be allowed to take coercive action as per the provisions of CERC Regulations i.e. regulation of power supply or curtailment of short term open access to the Petitioner till the dues are cleared and the Letter of Credit as payment security mechanism is established by the Petitioner.



## **Analysis and Decision**

22. In the light of the submissions of the parties and prayers in the petition, the following issues arise for our consideration:

- (a) Whether any directions can be issued to PTC to surrender its LTA for evacuation of power from Budhil HEP to Haryana State during the pendency of the appeals regarding termination of PPA before the Hon'ble Supreme Court?
- (b) Whether the Petitioner is permitted under the extant regulations to seek change in the drawee utility and drawal points in the LTA granted to PTC?
- (c) Whether a fresh application for LTA can be entertained during the subsistence of a LTA for the same capacity of the generating station?
- (d) Whether the Petitioner should apply for MTOA till the Civil Appeals regarding the termination of PPA are decided by the Hon'ble Supreme Court?
- (e) Who shall be liable to pay the LTA charges under the existing LTA till the same is relinquished or reallocated?
- (f) Whether the Petitioner is entitled to refund of the amount of LTA charges from April 2014 to February 2016?
- (g) Whether any direction is required to be issued to CTU not to take any coercive measure to recover the LTA charges?





The above issues have been dealt with in the succeeding paragraphs.

**Issue No.1: Whether any directions can be issued to PTC to surrender its LTA for evacuation of power from Budhil HEP to Haryana State during the pendency of the appeals regarding termination of PPA before the Hon'ble Supreme Court?**

23. The Petitioner has submitted that PTC, in all fairness ought to have surrendered the LTA in 2011 itself when its efforts to obtain stay on the said PPA termination did not find favour with the Hon'ble Supreme Court or in the year 2012 in terms of the Minutes of Meeting dated 25.4.2012 held under the aegis of CEA. The Petitioner has further submitted that for all practical purposes, PTC has surrendered the LTA and CTU should take necessary action to utilise the relinquished capacity as there is no legal or contractual impediment that prevented CTU from asking PTC to surrender the LTA. As per the Petitioner, under Regulation 15A of the Connectivity Regulations, it is incumbent on CTU to ask the LTA customer to surrender the LTA if it is not utilised for one year which CTU has failed to discharge in this case. The Petitioner in its first prayer has sought a direction to PTC to surrender its LTA rights from the Budhil HEP to Haryana State.

24. The provisos to Regulation 15A of the Connectivity Regulations read as under:

“Provided that in the event of mutual termination of PPA or non-utilization of long term access by the long term access customer for a period exceeding one year from the scheduled date of commencement of long term access, the Central Transmission Utility or the transmission licensee, as the case may be, may ask such long term customer to surrender the long term access after being satisfied that because of such long term access, any other generation project, which has applied for long-term access, is likely to get stranded.

Provided further that Central Transmission Utility for the transmission license, as the case may be, may approach the Commission for appropriate directions in this regard:



Provided also that on termination of the Power Purchase Agreement or surrender of long term access in terms of the preceding two provisos, the long term access customer shall be liable to pay the transmission charges as required under Regulation 18 of these regulations.”

25. As per the above regulation, CTU may ask the Long Term Customer to surrender the LTA in the event of mutual termination of PPA or non-utilisation of the long term access rights for more than one year from the scheduled date of commencement of LTA. Further, on termination of the Power Purchase Agreement or surrender of the long term access right, the LTA customer is liable to pay the relinquishment charges as per Regulation 18 of the Connectivity Regulations.

26. The first condition to be fulfilled under proviso to Regulation 15A before CTU asks the Long Term Customer (in this case PTC) to surrender the LTA is the mutual termination of the PPA. In this case, the Petitioner entered into a Long Term PPA dated 30.3.2005 with PTC for supply of power for a period of 35 years from the date of commercial operation of the generating station. PTC entered into a Power Sale Agreement (PSA) with HPGCL on 21.9.2006. PTC was granted LTA by CTU in the year 2005 for transfer of power from the Petitioner's project to HPGCL. On 18.10.2007, BPTA was entered into amongst PTC, the Petitioner and CTU. As per the BPTA, PTC is the Injecting Utility and the injection point is Chamera Pooling station of PGCIL. The Drawee Utility is HPGCL with drawal points at the inter-connection points between the systems of HPGCL and PGCIL. Further, as per the BPTA, PTC is the Long Term Transmission Customer who carries the liability to pay the transmission charges for LTA. The Petitioner on 18.12.2009 terminated the PPA that was signed on 30.3.2005 with PTC. HPGCL challenged the termination before



HERC who in the order dated 25.8.2011 held that HERC had jurisdiction to adjudicate the matter. The Petitioner filed Appeal No.188 of 2011 before Appellate Tribunal who vide judgement dated 9.8.2012 held that HERC did not have the jurisdiction in the matter as there was no privity of contract between the parties. The Appellate Tribunal also declined to decide the question as to who was the appropriate authority to decide the dispute between the parties. Both PTC and HPGCL filed Civil Appeals before the Hon'ble Supreme Court. Though the appeals have been admitted, there is no stay on the operation of the judgement. The matter is presently *sub-judice* as to which forum shall deal with the dispute with regard to termination of PPA between the Petitioner and PTC, and after the issue of jurisdiction is decided, the appropriate forum shall decide the dispute. Thus, it is not a case of mutual termination of PPA. It is pertinent to mention that PTC approached this Commission by way of Petition No.253/MP/2012 for adjudication of the dispute with regard to the termination of PPA and this Commission after taking note of the pendency of the appeals in the Hon'ble Supreme Court declined to entertain the petition and directed that PTC should decide its course of action in the light of the decision of the Hon'ble Supreme Court. Since, this is not a case of mutual termination of PPA, the condition warranting CTU to ask PTC to surrender the LTA is not fulfilled and therefore, CTU cannot be said to have abdicated its statutory responsibility.

27. The second condition to be fulfilled as per the proviso to Regulation 15A is non-utilisation of the LTA for more than one year. The Petitioner after getting connected to the Chamera Pooling station approached CEA with regard to the



issues relating to commissioning of its generating station. A meeting was held under the aegis of Member (PS) on 25.4.2012 with attendance of the representatives of the Petitioner, POSOCO, NRLDC, HPSLDC, PTC and CTU. After taking into account the pending litigations, the issue of sharing transmission charges was agreed as under:

“6. PTC stated that till the time the matter is resolved, M/s Lanco Budhil should reimburse the LTA charges of ISTS network PTC. Lanco was agreeable to pay the long term access charges directly to CTU. PTC also suggested that LTA charges be directly billed to Lanco. CTU stated that billing directly to Lanco cannot be done since LTA is in the name of PTC. PTC agreed to surrender the LTA. Lanco agreed to apply for fresh LTA for full maximum injection envisaged for a target region or for a new beneficiary as the case may be. It was decided that in the interim, Lanco would reimburse the LTA charges till the decision of the Standing Committee of Power System Planning on Lanco’s application for LTA.”

Thus, as per the minutes of the meeting, it was on account of mutual agreement between the Petitioner and PTC that the Petitioner agreed to pay the LTA charges, though the bills would be raised on PTC since the LTA was in its name. In the meeting, PTC agreed to surrender the LTA and the Petitioner agreed to apply for fresh LTA for a target region or for a new beneficiary. It was decided in the meeting that as an interim arrangement, the Petitioner would reimburse the LTA charges till the decision of the Standing Committee of Power System Planning on LANCO’s application for LTA. Neither PTC surrendered the LTA nor the Petitioner applied for fresh LTA. The Petitioner paid the LTA charges from April 2014 till February 2016 and thereafter stopped payment. The Petitioner entered into a PPA with UPCL for long term supply of power and thereafter, made an application to CTU on 15.3.2016 for change of drawee utility and drawal points in accordance with the PPA with UPCL. CTU thereafter consulted PTC and the Petitioner on 5.4.2017 to review the non-payment of dues towards the transmission charges and issues related in the



transfer of LTA from PTC to the Petitioner. However, PTC informed that since the termination of the PPA by the Petitioner is presently sub-judice before the Hon'ble Supreme Court and surrender of LTA involved financial liability at the end of PTC in the form of relinquishment charges and quantum of relinquishment charges is uncertain, PTC could not arrive at a decision in the matter. It is undisputed that in terms of Regulation 15A of Connectivity Regulations, surrender of LTA is related to payment of relinquishment charges for the surrendered LTA. Though CTU tried to persuade PTC to surrender the LTA, the PTC did not agree on account of the financial liability in the form of relinquishment charges. Further, PTC in its affidavit dated 9.3.2017 has stated that it has no objection to the transfer of LTA in the name of the Petitioner during the pendency of the case before the Hon'ble Supreme Court but subject to the condition that there is no liability on PTC. It therefore emerges that CTU has made attempts to persuade PTC to surrender the LTA who conditionally agreed for the same without any liability of relinquishment charges. In our view, LTA was operationalized by CTU with the agreement of both the Petitioner and PTC and the Petitioner also paid the transmission charges till February 2016. Since the LTA has been operationalized with the consent of both the Petitioner and PTC and the Petitioner was getting offset of the STOA charges paid by it against the LTA charges, the LTA was being actually utilised. Therefore, it cannot be said that it is a case of non-utilisation of LTA till February 2016 attracting the provisions of Regulation 15A of the Connectivity Regulations.

28. Neither the Petitioner nor PTC is paying the transmission charges for the LTA since March, 2016. The Petitioner has stopped paying the charges as the PTC did



not surrender the LTA as agreed in the meeting dated 25.4.2012. We notice that after Uttarakhand Electricity Regulatory Commission (UERC) approved the draft PPA between the Petitioner and UPCL for purchase of 70 MW capacity from Budhil HEP on long term basis, PTC wrote a letter dated 4.1.2017 to UPCL with copy to UERC requesting them to restrain UPCL from signing the PPA with the Petitioner. Even, HPGCL wrote a letter dated 2.1.2017 to UPCL with copy to UERC requesting the latter to revisit the matter of signing of PPA since HPGCL has entered into PPA for full capacity for 35 years and the issue of termination of PPA by the Petitioner with PTC is *sub-judice* before the Hon'ble Supreme Court. Further, PTC in its affidavit dated 9.3.2017 has submitted that the issue of termination of PPA is *sub-judice* and till the matter is finally decided by the Hon'ble Supreme Court, there cannot be a final adjudication with respect to supply of power. In our view, if PTC intends to keep its right over the LTA alive, it is obligated to pay the transmission charges. PTC cannot be allowed to claim its right over the LTA by taking shelter under the pendency of the appeal before the Hon'ble Supreme Court and at the same time, refuse to discharge its obligations to pay the monthly transmission charges. It is the prime responsibility of PTC to pay the transmission charges under the BPTA irrespective of whether it utilises the LTA or not. The LTA has become non-operational and defunct by the conduct of PTC. Therefore, non-utilisation of LTA has occurred from the date PTC has failed to pay the transmission charges i.e. from March 2016. CTU shall write to PTC within 15 days of issue of the order for surrender of LTA with payment of relinquishment charges which shall be decided in the light of the order in Petition No. 92/MP/2015. If, PTC surrenders the LTA, then



the application for LTA, if made by the Petitioner, shall be considered for grant of LTA within one month. If, PTC does not surrender the LTA, then the liability for LTA charges shall accrue to the account of PTC till the LTA is relinquished.

**Issue No.2: Whether the Petitioner is permitted under the extant regulations to seek change in the drawee utility and drawal points in the LTA granted to PTC?**

29. The second prayer of the Petitioner is that Respondent No.1, namely CTU, be directed to permit change of drawee as requested by the Petitioner vide its letter dated 15.3.2016. As already noted, the BPTA dated 18.7.2009 between the CTU and PTC indicates PTC as the Injection Utility with Injection Point as the Chamera Pooling Station and Drawee Utility is the HPGCL with drawal at all points where inter-connection between HPGCL and PGCIL system exist. The Petitioner terminated its PPA with PTC on 18.12.2009. The commercial operation of both units of the generating station took place on 30.5.2012. The Petitioner was selling power under short term access in the absence of long term PPA. The Petitioner entered into a long term PPA with UPCL for long term supply of power from the generating station to Uttarakhand. The Petitioner made an application dated 15.3.2016 for change of Drawee Utility to UPCL and drawal location to all the points where the inter-connection between Uttarakhand State network and PGCIL system exist. On receipt of the application, CTU vide its letter dated 11.4.2016 sought the comments of PTC on the request of the Petitioner for change of drawee utility and drawal location and since PTC was the original LTA grantee, CTU suggested to PTC to make a formal request from its side in this regard. PTC in its letter dated 18.4.2016



replied that since the matter regarding termination of PPA is *sub-judice* before the Hon'ble Supreme Court, the subject LTA may be changed in the name of the Petitioner without any liability on PTC till such time the matter attains finality in the competent court of law. The Petitioner vide its letter dated 17.5.2016 requested the CTU to change the drawee utility and drawal point as per its earlier request dated 15.3.2016 and also agreed to indemnify CTU, NRLDC and NLDC at all times from all damages, losses, claims and any other legal or commercial liabilities arising out of the order of this Commission, Appellate Tribunal or Hon'ble Supreme Court with respect to the requested change of drawee utility and drawal location. CTU vide its letter dated 16.4.2016 declined to accept the request of the Petitioner as it is not permissible under the extant regulations of the Commission.

30. Regulation 12 of the Connectivity Regulations deals with application for long term access. Relevant provisions of the said regulations are 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 exact source of supply or destination of off-take, as the case may be, shall have to be firmed up and accordingly notified to the nodal agency at least 3 years prior to the intended date of availing long-term access, or such time period estimated by Central Transmission Utility for augmentation of the transmission system, whichever is lesser, to facilitate such augmentation:

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 alongwith 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.”

31. As per the above provisions, an applicant can apply long term access alongwith the details of person to whom power is to be supplied or from whom power is to be procured and the quantum of power and such other details as prescribed in the Detailed Procedure. Further, in the absence of firming up of the quantum of power in respect of the person for supply of power or source for procurement of power, the applicant shall indicate the quantum of power alongwith the name of the region (s) in which the electricity is proposed to be interchanged using inter-State transmission system. If a generating company is the applicant and has applied for long term access without identified beneficiaries, it will have to notify the CTU alongwith copy of the PPA after firming up the long term beneficiaries. Only in the following cases, fresh application for LTA shall be made by the person who has been granted long term access:

(a) Where there is change in the location of the applicant;



(b) Where there is change by more than 100 MW in the quantum of power to be interchanged using inter-State transmission system;

(c) Where there is change in region from which electricity is required to be procured or to which electricity is required to be supplied.

32. The provisions of Regulation 12 of Connectivity Regulations show that a person who has been granted long term access can make a fresh application for change of location. Since PTC has been granted long term access for evacuation of power from Budhil HEP of the Petitioner, it can only apply for change of drawee location. Since, the Petitioner is not the Long Term Customer in terms of the BPTA dated 18.10.2007, it is not eligible to seek change in the drawee utility and drawee location in the BPTA. Further, the consent of PTC to change the LTA in the name of the Petitioner till the matter attains finality in the Hon'ble Supreme Court and that too, without any liability on PTC amounts to no objection for conditional transfer of LTA from PTC to the Petitioner. It is pertinent to mention that there is no provision for transfer of LTA under the Connectivity Regulations and the LTA granted to a person is non-transferable. If an LTA Customer intends to surrender the LTA, it is permitted to do so with payment of relinquishment charges and such surrendered capacity can be allocated to another LTA applicant as per the prescribed procedure. In the absence of any provision in the Connectivity Regulations or Detailed Procedure, CTU has correctly declined the request of PTC to transfer the LTA in the name of the Petitioner and the request of the Petitioner to change of drawee utility and change of drawal points.



**Issue No.3: Whether a fresh application for LTA can be entertained during the subsistence of a LTA for the same capacity of the generating station?**

33. During the hearing of the petition on 14.12.2016, learned counsel for CTU submitted that if the Petitioner is interested in supply of power to UPCL, it can make an application to CTU which shall be considered after following due process. In response thereto, learned Senior Counsel for the Petitioner submitted that the Petitioner agreed to make an application for LTA to CTU for grant of LTA for supply of power to UPCL. The Commission observed in the Record of Proceedings that since the submission made on behalf of CTU during the hearing was at variance with its stand taken in the earlier letter dated 14.6.2016, CTU should clarify its stand through affidavit. CTU has filed an affidavit dated 30.12.2016 to that effect and has submitted as under:

“CTU has not altered any of its stance. CTU stands by the letter dated 14.6.2016 wherein MTOA route was suggested to Greenco given the LTA granted to PTC with Greenco (as generating entity) at most directly or at the very least incidentally being the subject matter of adjudication in appeal before the Hon’ble Supreme Court of India.”

The Petitioner in its rejoinder affidavit dated 13.4.2017 has submitted that even though the learned counsel for the Petitioner submitted that CTU would consider the fresh application of the Petitioner for grant of LTA, if made, but the subsequent conduct of CTU was contrary to the express undertaking before the Commission made on 14.12.2016.

34. We notice that there is no embargo in the Connectivity Regulations on any applicant to apply for LTA for supply of power from one location to another. After the application is made in accordance with the Connectivity Regulations and Detailed



Procedure, it has to be processed by CTU in accordance with Regulations 13, 14 & 15 of the Connectivity Regulations and the Detailed Procedure and if the corridor is not available, then LTA could be denied. What the learned counsel for CTU submitted during the hearing on 14.12.2016 is that if a fresh application was made by the Petitioner, it would be considered after following the due process. This is the correct legal position. However, CTU has tried to improve upon the submission of learned counsel in its affidavit by taking a stand that the Petitioner cannot be granted LTA and MTOA is the only route available to the Petitioner. In our view, if the position of CTU is accepted, then no LTA can be granted till the dispute between the Petitioner and PTC/HPGCL is decided. As we have already taken a view in para 28 of this order that if PTC surrenders the LTA, then the application of the Petitioner for LTA, if made, shall be considered by CTU. Therefore, CTU should not deny to entertain the application of the Petitioner for grant of LTA.

**Issue No.4: Whether the Petitioner should apply for MTOA till the Civil Appeals regarding the termination of PPA are decided by the Hon'ble Supreme Court?**

35. The Petitioner vide its letter dated 17.5.2016 requested CTU to change the drawee utility and drawal point as per its earlier request dated 15.3.2016 and agreed to indemnify CTU, NRLDC or NLDC at all times from all damages, losses, claims, and any other legal or commercial liabilities arising out of the order of CERC, APTEL or the Hon'ble Supreme Court with respect to the requested change of drawal utility and drawal location. CTU vide its letter dated 14.6.2016 replied to the Petitioner that its request cannot be acceded under the extant regulations of the Commission. Further, CTU advised the Petitioner in the said letter as under:



“Under such a situation, it would not be prudent to take any action towards LTA, which is primarily based on the PPA in question. However, it may be advised that till the dispute is resolved M/s Greenco Budhil may avail MTOA for a maximum period of 3 years which may be followed by subsequent MTOAs if necessary.”

36. However, the Petitioner is not agreeable to apply for medium term open access (MTOA) and as per the record, no application for MTOA has been made so far. We have issued directions in para 28 to CTU to ask PTC to surrender the LTA. If, PTC fails to surrender the LTA, then the LTA charges from March, 2016 onwards shall accrue to the account of PTC. In that event, the Petitioner shall be required to seek MTOA for evacuation of power to UPCL.

37. It is pertinent to mention that as per Sixth Amendment to the Connectivity Regulations, the period of MTOA has been increased from 3 years to five years. The relevant provision is extracted as under:

“(o) **Medium-Term Open Access** means the right to use the inter-State Transmission system for a period equal to or exceeding 3 months but not exceeding 5 years;”

Further, Regulation 16B of the Connectivity Regulations provides for the utilisation of the unutilised LTA as under:

**“16B. Underutilisation of Long term Access and Medium term Open Access:**

In case it is observed by RLDCs that the LTA or MTOA customer’s request for scheduling is consistently (for more than 5 days) lower than the quantum of LTA or MTOA granted by the Nodal Agency (i.e.; CTU), RLDC may issue a notice to such LTA or MTOA customer asking the reasons for such under-utilization. The LTA or MTOA customer shall furnish the reasons for such under-utilization and will provide such details like the reduced requirement, likely period, etc. by the following day. The un-utilized transfer capability will then be released for scheduling of Medium term and Short-term open access transaction depending upon the period of such underutilization with a condition that such transaction shall be curtailed in the event original LTA or MTOA customer seeks to utilize its capacity:



Provided that where the capacity tied up under LTA is released under MTOA, the concerned generator shall not be liable to pay the LTA charges for such reallocated capacity.”

38. As per the above provision, if the request for scheduling under LTA remains consistently (for more than 5 days) lower than the LTA quantum, the un-utilised capacity will be released by RLDC concerned under MTOA or STOA depending on the period of under-utilisation. It further provides that where the capacity tied up under LTA is released under MTOA, the concerned generator shall not be liable to pay the LTA charges for such re-allocated capacity. If an application for MTOA is made by the Petitioner, the same shall be decided within one month from the date of the application. In terms of Regulation 16B, the MTOA paid by the Petitioner shall be offset against the LTA charges.

**Issue No.5: Who shall be liable to pay the LTA charges under the existing LTA till the same is relinquished or reallocated?**

39. The Petitioner has sought a direction that it is not liable to pay the transmission charges under BPTA from May, 2012 onwards. As regards the liability for payment of LTA charges, it primarily remains the responsibility of PTC till the time the LTA is relinquished in accordance with the provisions of the BPTA. In the Minutes of Meeting dated 25.4.2012 held under the aegis of Member (PS) CEA, the following was decided with regard to payment of transmission charges:

“6. PTC stated that till the time the matter is resolved M/s Lanco Budhil should reimburse the LTA charges of ISTS network to PTC. Lanco was agreeable to pay the long term access charges directly to CTU. PTC also suggested that LTA charges could be directly billed on Lanco. CTU stated that billing directly to Lanco cannot be done since LTA is in the name of PTC. PTC agreed to surrender the LTA. Lanco agreed to apply for fresh LTA for full maximum injection envisaged for a target region or for a new beneficiary as the case may be. It was decided that in the interim, Lanco



would reimburse the LTA charges till the decision of the Standing committee of Power System Planning on Lanco's application for LTA."

As an interim arrangement, the predecessor of Petitioner agreed to reimburse the LTA charges on behalf of PTC till PTC surrenders the LTA and the Petitioner applies for LTA either to a target region or to a new beneficiary. The Petitioner initially paid for two years and thereafter stopped payment of LTA charges. In our view, an interim arrangement between the Petitioner and PTC was made to facilitate payment of transmission charges and cannot shift the liability for payment from PTC to the Petitioner which shall continue with PTC. Therefore, the liability for LTA charges shall continue with PTC except for the period where the Petitioner willingly bears the LTA charges.

**Issue No.6: Whether the Petitioner is entitled to refund of the amount of LTA charges from April 2014 to February 2016?**

40. The payment of LTA charges by the Petitioner on behalf of PTC as agreed in the meeting dated 25.4.2012 was a matter inter se between the parties. The Petitioner had voluntarily accepted to pay the transmission charges on behalf of PTC knowing fully that the said LTA was for evacuation of power to Haryana State and it has terminated the PPA with PTC for supply of power to Haryana State. The Petitioner paid the transmission charges till February, 2016 in anticipation of the surrender of LTA by PTC and grant of LTA to the Petitioner which did not materialise. Moreover, the Petitioner was getting the offset of MTOA/STOA charges against the LTA charges paid by it corresponding the quantum of LTA. This is a commercial risk taken by the Petitioner and the Commission does not intend to enter



into such dispute between the Petitioner and PTC and therefore, no direction can be issued to the CTU in this regard.

**Issue No.7: Whether any direction is required to be issued to CTU not to take any coercive measure to recover the LTA charges from the Petitioner?**

41. The Petitioner has prayed to restrain the CTU not to take any coercive steps for recovery of LTA charges from the Petitioner. We have decided that the liability for payment of LTA charges from March, 2016 onwards shall remain with PTC. If, the Petitioner is granted MTOA on the basis of the application made by it, CTU shall facilitate evacuation of power of the Petitioner under MTOA and shall not take any coercive measures for recovery of the LTA charges on account of LTA taken by PTC.

**Summary of our decision**

43. Summary of our decision is as under:

- (a) CTU can ask the LTA Customer to surrender the LTA in terms of Regulations 15A of the Connectivity Regulations if the PPA is mutually terminated or LTA remains unutilised for more than one year. This is not a case of mutual termination of PPA as the matter is presently *sub-judice* in the Supreme Court. LTA was operationalized with the payment of LTA charges by the Petitioner on behalf of PTC irrespective of whether power was scheduled under the LTA or not. We, therefore, do not find any infirmity in the action of CTU for not invoking Regulation 15A of the Connectivity Regulations. However, non-payment of LTA charges with effect from March, 2016 is





sufficient ground for invoking Regulation 15A and CTU may take necessary action in this regard. If PTC does not surrender the LTA within the stipulated time as indicated in para 28 of this order, then the liability for payment of LTA charges shall accrue to the account of PTC till the LTA is relinquished.

- (b) Connectivity Regulations do not permit a person other than an LTA Customer to seek change of drawee utility or drawal points in the BPTA. Therefore, CTU has correctly declined the request of the Petitioner for change of drawee utility and drawl locations.
- (c) There is no embargo in the Connectivity Regulations to make an application for grant of LTA for the capacity tied up in another LTA. If an application for LTA is made by the Petitioner, then it shall be considered after following due process. An applicant cannot be denied to make an application for LTA. If PTC surrenders the LTA, then the application of the Petitioner shall be considered for grant of LTA which shall be subject to the final outcome of the dispute between the Petitioner and PTC/HPGCL pending before the Hon'ble Supreme Court.
- (d) CTU has been directed to ask PTC to surrender the LTA. If PTC surrenders the LTA, then CTU shall consider the application of the Petitioner for grant of LTA. If PTC does not surrender the LTA, then the Petitioner shall be required to make application for MTOA for evacuation of power to UPCL which shall be decided by the Petitioner within one month from the date of the application. On operationalization of MTOA, the Petitioner shall be liable to pay MTOA



charges and offset shall be permissible in terms of Regulation 16B of the Connectivity Regulations. Grant of MTOA to the Petitioner shall be subject to the outcome of the case in the Supreme Court. However, the liability of PTC to make payment of the LTA charges shall continue till the LTA is relinquished.

(e) PTC carries the liability to pay the transmission charges during subsistence of the LTA except where the Petitioner willingly bears the transmission charges. If PTC relinquishes the LTA, it carries the liability to pay the relinquishment charges in terms of Regulation 18 of the Connectivity Regulations which shall be decided in the light of the order in Petition No. 92/MP/2015.

(f) As regards the claim for refund of transmission charges paid by the Petitioner from April 2014 till February 2016, it is a matter inter se between PTC and the Petitioner and the latter had voluntarily accepted the liability. Therefore, no direction can be issued to CTU for refund of the LTA charges paid by the Petitioner.

(g) CTU is directed not to take any coercive measures for recovery of outstanding LTA charges from the Petitioner on account of the LTA taken by PTC, since we have held that the PTC shall be liable to pay the LTA charges till the LTA is relinquished. CTU is directed to take necessary action to recover the dues from PTC.



44. Petition No. 190/MP/2016 along with IA No. 62 of 2016 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/-**  
**(P.K. Pujari)**  
**Chairperson**

