

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 16/RP/2019
in Petition No. 242/MP/2017**

Subject : Review Petition under Section 94 of the Electricity Act, 2003 read with Regulations 103, 111 and 114 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 for review of order dated 3.12.2018 passed by this Commission in Petition No. 242/MP/2017.

Petitioner : Central Transmission utility – Power Grid Corporation of India Limited

Respondent : Aryan MP Power Generation Private Limited

Date of Hearing : 3.12.2019

Coram : Shri P. K. Pujari, Chairperson
Dr. M. K. Iyer, Member

Parties present : Ms. Suparna Srivastava, Advocate, PGCIL
Ms. Jyoti Prasad, PGCIL
Dr. V. N. Paranjape, PGCIL
Shri Swapnil Verma, PGCIL
Shri Ranjeet Rajput, PGCIL
Shri Matrugupta Mishra, Advocate, Aryan MP
Shri Samyak Mishra, Advocate, Aryan MP
Shri Praveen Kataria, Aryan MP

Record of Proceedings

Learned counsel for the Review Petitioner submitted that the present Review Petition has been filed seeking review of the order dated 3.12.2018 in Petition No. 242/MP/2017 inasmuch as the direction to the Review Petitioner to refund the encashed Bank Guarantee after adjustment of the relinquishment charges to the Respondent with 9% interest from the date of encashment till payment. Learned counsel further submitted as under:

(a) In the impugned order, there is no finding as regard to any wrongful detention of monies by the Review Petitioner, rather there is a clear finding of the Commission that the invocation and encashment of bank guarantee was in accordance with the contractual arrangement. Accordingly, the Review Petitioner has been erroneously fastened with the interest liability. In support of its contentions, learned counsel relied upon the judgments of Hon'ble Supreme Court in the cases of (i) Trojan & Co v. Nagappa Chettiar [1953 SCR 789], (ii) South Eastern Coalfields Limited v. State of M.P. [(2003) 8 SCC 648], and (iii) India Council for Enviro-Legal Action v. Union of India [(2011) 8 SCC 161].

(b) Amount under the bank guarantee encashed as per the provisions of the BPTA is never retained by the Review Petitioner but it is disbursed in the POC pool as per the Billing, Collection and Disbursement Procedure issued under the

Central Electricity Regulatory Commission (Sharing of Transmission Charges and Losses) Regulations, 2010..

(c) There has been no instance wherein the Commission has directed to refund the bank guarantee along with interest even though direction for adjustment of encashed bank guarantee with liability towards relinquishment charges had been passed in various Petitions such as Petition Nos. 61/MP/2017, 76/MP/2016, 167/MP/2016, 246/MP/2017 and 317/MP/2013.

2. Learned counsel for the Respondent, Aryan MP Power Generation Private Limited, mainly submitted as under:

(a) The instant Review Petition is not maintainable in terms of the limited grounds available for review under Section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908. There is also no error apparent on the face of record in the impugned order as contended by the Review Petitioner. In support of its contentions, learned counsel relied upon the judgments of Hon'ble Supreme Court in the cases of (i) State of West Bengal v. Kamal Sen Gupta [(2008) 8 SCC 612] and (ii) Parsion Devi & Ors. v. Sumitri Devi & Ors. [(1997) 8 SCC 715].

(b) In terms of the settled principle of law, a person, deprived of the use of money to which he is legitimately entitled to, has right to be compensated for the deprivation by whatever name it may be called viz. interest, compensation or damages. In the instant case, the Respondent has been deprived of the legitimate use of the bank guarantee amount, albeit after the adjustment towards the relinquishment charges, from the day the bank guarantee was encashed. Therefore, the Respondent is entitled for interest on the refund of the balance amount. The disbursement of amount under the bank guarantee in the POC pool account is of no consequence. In support, the learned counsel relied upon the judgment of Hon'ble Supreme Court in the case of Executive Engineer, Dhenkanal Minor Irrigation Division Orissa, and Ors. v. N. C. Budharaj (Deceased) by Lrs. and Ors. [(2001) 2 SCC 721].

(c) The conduct of the Review Petitioner in invoking the bank guarantee was itself arbitrary in the first place as the Review Petitioner invoked the bank guarantee while the substantial question of relinquishment and consequential liability was pending for adjudication and in violation of the Record of Proceeding dated 21.7.2015 in Petition No. 92/MP/2015.

(d) Respondent has also filed the Petition under Section 142 of the Act for non-compliance of the order dated 3.12.2018 in Petition No. 242/MP/2017 and for issuance of appropriate direction to the Review Petitioner for payment of amount to be refunded after deduction of relinquishment charges from the encashed bank guarantee along with interest. Apart from interest, the Review Petitioner has also not paid Rs. 4.43 crore towards the principal amount.

3. After hearing the learned counsels for the parties, the Commission reserved order in Review Petition.

By order of the Commission

**Sd/-
(T.D. Pant)
Deputy Chief (Legal)**